

SAYVETZ, ANN

ENERGY-RELATED LEGISLATION IN
THE ROCKY MOUNTAIN STATES.

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ENERGY-RELATED LEGISLATION
IN THE ROCKY MOUNTAIN STATES

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FOREWORD

by the

Rocky Mountain Center on Environment

This intern research project concerns a topic of vital importance to every citizen of the Rocky Mountain region--state control over energy matters. Ann Sayvetz, a law student at the University of Colorado, made a thorough examination of legislation relating to energy in eight states: Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, and Wyoming. In addition, she discusses gaps in legislation, and examines and describes environmentally sound legislative components. A most interesting discussion of jurisdictional conflicts between states and the federal government is included.

Due to an unfortunate accumulation of adverse circumstances, the printing and distribution of this report has been delayed for many months. The bulk of the work was performed in the summer of 1973. However, we think it is still a useful and timely report, even though legislation in 1974 sessions of the various legislatures could not be included here.

We are very grateful to Ms. Sayvetz for the work she has done here. We thank also the Western Interstate Commission on Higher Education for providing support and assistance, and the Rockefeller Foundation for the financial assistance it has given ROMCOE for intern work such as this.

The views of the author of this paper are hers, and do not necessarily constitute an opinion, statement or position of ROMCOE.

ACKNOWLEDGEMENTS

The value of personal consultation, advice, and assistance in the preparation of this report was far greater than I can indicate in a brief statement. Correspondents and contacts in many states participated in this effort. I would like to single out for recognition here several people who were absolutely critical to my research work.

Kathy Fletcher, Energy Specialist for ROMCOE, supervised my project and provided much valuable information and direction. Jim Monaghan, then Intern Director for ROMCOE, was also an invaluable source of information and aid. Professors Donald Carmichael and David Engdahl of the University of Colorado Law School, and Professor Charles Ehren of the University of Denver Law School were extremely generous advisors. I would also like to thank particularly Jerry Norris of the Council of State Governments, and Senator James A. Mack of Arizona for providing me with plentiful information on recent legislative action in the Rocky Mountain states.

My gratitude goes also to the entire ROMCOE staff, and to the Western Interstate Commission for Higher Education.

Ann Sayvetz
Boulder, Colorado

ABSTRACT

This paper examines legislation in eight Rocky Mountain states that pertains to environmental aspects of energy resource development and use. The states covered are Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, and Wyoming. To provide perspective on the problems of energy development in the region, four energy resources important in the eight states are described, along with environmental problems belonging to each: coal, oil shale, natural gas, and nuclear materials. Then by way of charts and discussion, legislation in these states in the following areas is compared: study groups/commissions, surface mining and reclamation, land use, energy conversion facilities, atomic energy, conservation of energy, and legal standing for citizen action. In addition, the possibility of a regional approach to some of these topics is explored.

Next, issues of legal jurisdiction and decision-making power are considered, with their effect on the resolution of environmental questions. The fifth section is a discussion of various aspects of policy formulation in the realm of energy development, use, and needed research. A conclusion and recommendations are presented in the final sections.

1. Introduction

The purpose of this paper is to examine legislation that affects energy production and consumption, and related environmental factors, in the Rocky Mountain states (Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, and Wyoming). Legislation is a mechanism by which energy resource development and the subsequent use of energy may be influenced, directly and indirectly. This report begins with a survey of existing legislation in specific energy-related areas. Then the laws (and proposed legislation) are examined in some detail, particularly with respect to their potential efficacy.

Demand is a fundamental concept in any study of energy issues. The current energy "crisis" has given rise to conflicts between the cry for expanded energy development and the environmental degradation that results. How can we determine the amount, best sources, and end uses of energy we actually need? Are there energy-consumptive activities that should and can be subordinated to the need and desire to preserve the natural elements of the environment? The resolution of these conflicts depends at least in part on the establishment of priorities among the competing parts of the energy picture.

This study looks at the actual and potential role of legislation in the resolution of energy problems. Legislation is a slow process, and therefore a somewhat unwieldy mode of response to urgent problems such as those created by a sudden fuel shortage. However, a state legislature is an especially appropriate forum for medium and long-range planning. It is also an appropriate forum for debate on energy/environmental conflicts, as long as a broad spectrum of interests and attitudes is represented.

Environmental quality is beginning to be regarded as a legitimate and valid legislative goal. However, for many it is a difficult goal to accept because it challenges historic concepts of private economics (with environmental costs born by the public), and the freedom of individual actions without regard for public welfare. It is now evident that we can no longer tolerate one person's freedom at the expense of a collective right to a clean, healthy, and beautiful environment.

At this time it appears that environmental quality cannot be maintained without regulation and control. Public opinion has not reached the point of assuming sufficient voluntary responsibility. Failure to establish regulations and standards for energy resource development results in an increasing amount of irreversible damage to the environment. Failure to meet this challenge now will only make it harder to meet in the future, with fewer options to choose from. Legislation in the states is one way to meet this challenge.

Types of energy development with the most significant environmental impacts for the Rocky Mountain region are surveyed in the following section. Existing energy-related legislation is then discussed and compared, with the aid of charts showing the state-by-state breakdown of statutes within various energy-related categories. Decision-making powers and conflicts between levels of government and among branches at each level are explored in the section "Jurisdiction," in terms of both constitutional and policy considerations. "Policy formulation" is a discussion of concepts of energy demand, use, and alternatives, and how they might be affected by legislation. The final sections consist of a conclusion and recommendations for environmental protection in energy-related legislation.

II. Parameters of the Problem

The Rocky Mountain region is, to a certain extent, becoming an "energy colony" of the rest of the nation. Four types of energy development with significant potential for environmental problems are found in the Rocky Mountain states: coal, oil shale, nuclear stimulation of natural gas, and uranium. Conventional oil and gas development are also important in the region, but are not singled out for discussion here. As a result of the current energy shortage and increasing industry interests in the region, there is a great deal of pressure to develop these resources rapidly. However, hurried and unregulated development would have significant environmental and socioeconomic impacts on the region. Specific environmental problems relating to each resource are discussed below; however, a number of broader issues are relevant to all.

Land use planning, or the determination of how land shall be allocated, is one of the basic issues underlying energy resource development. Plans to strip mine coal, develop oil shale, or construct electrical generating plants and transmission lines compete with other land uses such as agriculture, ranching, recreation, and wilderness. Many of these land uses are mutually exclusive; the decision to develop energy may have irreversible effects.

Therefore, the value of the proposed land use must be compared with the (perhaps permanent) loss of the present one, taking into account the time span of development. If a coal mine will be exhausted in twenty-five years, and the land cannot reassume its former character, the value of the resource development must be compared to the anticipated long-term environmental damage.

The problem of rapid population growth is corollary to the land use issue. Most of these energy resources are found in rural areas. A sudden influx of people can greatly strain a community that has had no time or adequate capacity to plan and pay for expansion of vital services--housing, water, sewage, and schooling. Political power, and indeed a way of life, will shift from an agricultural to an industrial base.

Air and water quality are threatened by potential energy development, as are the fragile ecosystems of the Rocky Mountains. The arid to semi-arid climate not only limits the ability to revegetate after disturbance, but also may prove to be a controlling factor for the development of energy production requiring large quantities of water, such as oil shale processing, electrical generation, and coal gasification.

Coal

Coal production and its impacts on the environment fall into three categories: mining procedures, use as a fuel for electrical generation, and use as a source of gas produced by coal gasification.

Most coal in the Rocky Mountain region is obtained by surface or strip mining.

The advantages of strip mining are economic: the whole seam can be recovered, only a small labor force is needed, and health and safety measures for underground mines are not necessary. However, reclamation costs are usually not a calculated expense, and deeper seams with vast coal reserves are not recovered.

Reclamation, or the reestablishment of a productive and self-sustaining ecosystem, is a key issue in the surface mining debate. According to a National Academy of Science report,¹ the low annual rainfall of the mountain states may render reclamation impossible in some places, and restoration of the original ecosystem not possible at all. This study also points to the extremely long time periods needed for recovery. (This situation distinguishes the case of western coal from that of rainier Appalachia and the Midwest, where the problems of reclamation are different.) There are also potential problems of runoff and ground water contamination, and disturbance of aquifers.

Although the trend is toward strip mining of coal, there is some deep mining in the Rocky Mountain region. A widespread shift to deep coal mining is unlikely, short of a ban on strip mining, even though the deep reserves are far more plentiful than those found near the surface (see charts, p.5). Deep mining minimizes reclamation problems, but may in turn cause ground water contamination and subsidence.

Coal as a fuel in electrical production is a major source of air pollution even when low sulfur coal is used (the type found most often in the Rocky Mountain region). Coal gasification would also cause air pollution. Perhaps more significantly, any coal conversion facility requires large amounts of water, with attendant diversion and reservoir facilities and effects on stream flows. In addition, such conversion facilities are primarily responsible for large influxes of population.

Oil Shale

Oil shale is being considered for development on private and public lands in Colorado, Wyoming, and Utah, by private industry and the federal government. Mining and processing of oil shale has, thus far, only been conducted on an experimental basis. The mining, processing, and waste disposal associated with oil shale development will require large amounts of water. The waste product is much larger in volume than the original ore. Oil shale development may result in damage similar to that outlined for coal strip mining: diversion of water courses (to supply water to the industries), disruption of wildlife habitats, loss of recreational areas, aesthetic damage, and (perhaps insurmountable) difficulties with revegetation. If underground mining techniques are used, there may be problems with geologic structures if nuclear blasting in connection with recovery of natural gas is continued in the same area.

Nuclear Stimulation of Natural Gas

Nuclear stimulation of natural gas is also an experimental technology, where the collection of natural gas is to be facilitated by the creation of underground chambers by atomic blasts. There is potential danger from radiation in the product gas, air, and regional ground water, as well as danger to oil shale deposits. Disruption for miles around will occur with each blast, at least temporarily.

Nuclear Developments

Much uranium is found in the Rocky Mountain region. Uranium must be enriched

for use in nuclear power plants, but the enrichment process itself requires large quantities of energy. Pressure may be created for increased coal-fired electrical generation plants for this purpose in the region. There will also be pressure to mine increasing quantities of uranium if more nuclear plants are built and the plutonium fast breeder reactor is developed. Uranium mining creates problems with radioactive mine tailings. In addition, nuclear waste disposal is a cumulative problem--waste is dangerous for centuries and cannot be "disposed" of. Plutonium, with a 24,000-year half-life of radioactivity, is one of the most toxic substances in existence.

Electricity Generation

Production of electricity is a major objective of coal and uranium development. Offshoot problems associated with electricity production are the land use aspects of utility siting (plants and transmission facilities), water use, and air pollution from the burning of fossil fuels.

ENVIRONMENTAL POLICY CENTER

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TABULATION OF COAL RESERVES:

I. RATIO OF DEEP MINE, LOW SULFUR COAL TO STRIPPABLE, LOW SULFUR COAL IN THE UNITED STATES.

30 : 1

II. RATIO OF DEEP MINE COAL TO STRIPPABLE COAL IN THE U. S.

34 : 1

III. RATIO DEEP MINE, LOW SULFUR COAL TO STRIPPABLE, LOW SULFUR COAL IN APPALACHIA

43 : 1

IV. RATIO DEEP MINE COAL TO STRIPPABLE COAL IN APPALACHIA

49 : 1

NOTE ON THE TERM "RESERVES";

Of the total coal resources, some 50 per cent, or 1.5 trillion tons of bituminous, subbituminous and lignite coal, are considered recoverable reserves, (i.e., minable under current economic conditions and with present technology, or technology that may be available in the future¹).²

1. Averitt, Paul, Coal Resources Of The United States, January 1, 1967, U. S. G. S. Bulletin 1275, U.S.G.P.O. 1969.
2. Factors Affecting The Use Of Coal In Present And Future Energy Markets, A background paper prepared by the Congressional Research Service, pursuant to S. Res. 45, A National Fuels And Energy Policy.

RESERVE SOURCE:

DeCarlo, Sheridan, and Murphy, Sulfur Content Of United States Coals, U. S. Bureau of Mines Information Circular 8312.

National Coal Association, Bituminous Coal Facts, 1972.

FIGURE 1. COAL RESERVES

-6-

RATIO OF DEEP MINE COAL TO STRIPPABLE COAL, BY STATE. (units in millions of tons)

BITUMINOUS COAL	TOTAL RESERVES	DEEP MINE RESERVES	STRIP MINE RESERVES	RATIO, DEEP MINE TO STRIP MINE RESERVES
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APPALACHIA

ALABAMA	13,577.8	13,443.8	134	100 : 1
E. KENTUCKY	29,414.8	28,633.8	781	37 : 1
MARYLAND	1,180.0	1,159.0	21	55 : 1
OHIO	41,024.0	39,991.0	1,033	39 : 1
PENNSYLVANIA	57,951.5	57,199.5	752	76 : 1
TENNESSEE	1,839.5	1,765.5	74	24 : 1
VIRGINIA	9,820.0	9,562.0	258	37 : 1
WEST VIRGINIA	102,666.4	100,548.4	2,118	47 : 1
TOTAL	257,474.0	252,303.0	5,171	49 : 1

INTERIOR AND GULF STATES

ALASKA	21,387.4	20,907.4	480	43 : 1
ARKANSAS	1,615.8	1,466.8	149	10 : 1
COLORADO	62,415.5	61,939.5	500	124 : 1
ILLINOIS	135,889.2	132,642.2	3,247	40 : 1
INDIANA	34,841.1	33,745.1	1,096	30 : 1
IOWA	6,522.5	6,342.5	180	35 : 1
KANSAS	20,738.0	20,363.0	375	54 : 1
W. KENTUCKY	36,895.4	35,918.4	977	37 : 1
MISSOURI	78,760.0	77,600.0	1,160	67 : 1
MONTANA	2,104.6	2,104.6	0	0
NEW MEXICO	10,686.0	10,686.0	0	0
OKLAHOMA	3,302.8	3,191.8	111	29 : 1
TEXAS	7,978.0	7,978.0	0	0
UTAH	27,658.0	27,508.0	150	183 : 1
WASHINGTON	1,571.0	1,571.0	0	0
WYOMING	12,819.0	12,819.0	0	0
TOTAL	465,184.3	456,759.3	8,425	54 : 1
TOTAL BITUMINOUS	722,658.3	709,062.3	13,596	52 : 1

SUBBITUMINOUS COAL

ROCKY MOUNTAINS AND NORTHERN GREAT PLAINS STATES

ALASKA	71,115.6	67,189.6	3,926	17 : 1
ARIZONA	4,047.0	3,660.0	387	9 : 1
COLORADO	18,229.5	18,229.5	0	0
MONTANA	132,116.6	128,716.6	3,400	38 : 1
NEW MEXICO	50,735.0	48,261.0	2,474	20 : 1
WASHINGTON	4,193.8	4,058.8	135	30 : 1
WYOMING	107,903.9	93,932.9	13,971	7 : 1
TOTAL	388,341.4	364,048.4	24,293	15 : 1

FIGURE 2. COAL RESERVES

RATIO OF DEEP MINE, LOW SULFUR COAL TO STRIPPABLE, LOW SULFUR COAL, BY STATES.

(units in millions of tons, sulfur content 1% or less)

<u>BITUMINOUS COAL</u>	TOTAL RESERVES	DEEP MINE, LOW SULFUR RESERVES	STRIP MINE, LOW SULFUR RESERVES	RATIO, DEEP LOW SULFUR TO STRIP, LOW SULFUR
<u>APPALACHIA</u>				
ALABAMA	13,577.8	2,045.5	33	62 : 1
E. KENTUCKY	29,414.8	21,599.8	532	41 : 1
MARYLAND	1,180.0	0	0	0
OHIO	41,024.0	611.0	0	0
PENNSYLVANIA	57,951.5	1,198.4	0	0
TENNESSEE	1,839.5	159.2	5	32 : 1
VIRGINIA	9,820.0	7,905.0	154	51 : 1
WEST VIRGINIA	102,666.4	46,333.6	1,138	40 : 1
TOTAL	257,474.0	79,852.5	1,862	43 : 1
<u>INTERIOR AND GULF STATES</u>				
ALASKA	21,387.4	20,907.4	480	43 : 1
ARKANSAS	1,615.8	0	3	0
COLORADO	62,415.5	61,915.5	500	123 : 1
ILLINOIS	135,889.2	573.7	0	0
INDIANA	34,841.1	370.5	0	0
IOWA	6,522.5	0	0	0
KANSAS	20,738.0	0	0	0
W. KENTUCKY	36,895.4	0	0	0
MISSOURI	78,760.0	0	0	0
MONTANA	2,104.6	269.4	0	0
NEW MEXICO	10,686.0	10,686.0	0	0
OKLAHOMA	3,302.8	1,022.8	10	102 : 1
TEXAS	7,978.0	0	0	0
UTAH	27,658.0	22,135.4	6	3689 : 1
WASHINGTON	1,571.0	1,571.0	0	0
WYOMING	12,819.0	12,819.0	0	0
TOTAL	465,184.3	132,270.7	999	1322 : 1
TOTAL BITUMINOUS	722,658.3	212,123.2	2,861	74 : 1
<u>SUBBITUMINOUS COAL</u>				
<u>ROCKY MOUNTAINS AND NORTHERN GREAT PLAINS STATES</u>				
ALASKA	71,115.6	67,189.6	3,926	17 : 1
ARIZONA	4,047.0	3,660.0	387	9 : 1
COLORADO	18,229.5	17,753.5	476	37 : 1
MONTANA	132,116.6	127,636.0	3,176	40 : 1
NEW MEXICO	50,735.0	48,261.0	2,474	20 : 1
WASHINGTON	4,193.8	4,058.8	135	30 : 1
WYOMING	107,903.9	94,518.3	13,377	7 : 1
TOTAL	388,341.4	364,390.4	23,951	15 : 1

FIGURE 3. COAL RESERVES

-8-

RATIO OF DEEP MINE COAL TO STRIPPABLE COAL, BY STATE. (units in millions of tons)

<u>LIGNITE</u>	TOTAL RESERVES	DEEP MINE RESERVES	STRIP MINE RESERVES	RATIO, DEEP MINE TO STRIP MINE RESERVES
ARKANSAS	350.0	325.0	25	13 : 1
MONTANA	87,481.7	83,984.7	3,497	24 : 1
NORTH DAKOTA	350,698.0	348,623.0	2,075	167 : 1
SOUTH DAKOTA	2,031.0	1,871.0	160	12 : 1
TEXAS	6,902.0	5,593.0	1,309	5 : 1
TOTAL	447,467.7	440,401.7	7,066	62 : 1

RATIO OF DEEP MINE, LOW SULFUR COAL TO STRIPPABLE, LOW SULFUR COAL BY STATE.

(units in millions of tons, sulfur content 1% or less)

<u>LIGNITE</u>	TOTAL RESERVES	DEEP MINE LOW SULFUR RESERVES	STRIP MINE LOW SULFUR RESERVES	RATIO, DEEP, LOW SULFUR TO STRIP, LOW SUL. RESERVES
ARKANSAS	350.0	325.0	25	13 : 1
MONTANA	87,481.7	81,399.1	2,957	27 : 1
NORTH DAKOTA	350,698.0	317,438.4	1,678	190 : 1
SOUTH DAKOTA	2,031.0	1,871.0	160	12 : 1
TEXAS	6,902.0	0	625	0
TOTAL	447,462.7	401,033.5	5,445	74 : 1

SUMMARY OF COAL RESERVES OF THE APPALACHIAN STATES, ON JANUARY 1, 1965.

TOTAL	257,474,000,000 tons
DEEP MINE	252,303,000,000 tons
STRIP MINE	5,171,000,000 tons
DEEP MINE, LOW SULFUR	79,852,500,000 tons
STRIP MINE, LOW SULFUR	1,862,000,000 tons
RATIO, DEEP MINE TO STRIP MINE	49 : 1
RATIO, DEEP MINE, LOW SULFUR TO STRIP MINE, LOW SULFUR	43 : 1

SUMMARY OF COAL RESERVES IN THE UNITED STATES, ON JANUARY 1, 1965.

TOTAL	1,558,467,400,000 tons
DEEP MINE	1,513,512,400,000 tons
STRIP MINE	44,955,000,000 tons
DEEP MINE, LOW SULFUR	977,547,100,000 tons
STRIP MINE, LOW SULFUR	32,257,000,000 tons
RATIO, DEEP MINE TO STRIP MINE	34 : 1
RATIO, DEEP MINE, LOW SULFUR TO STRIP MINE, LOW SULFUR	30 : 1

Introduction to Legislative Charts
pp. 10-22

Shown here is a tabulation of legislative activity for 1973 in the Rocky Mountain states. Each mark represents the general trend of legislation in each energy-related area. Charts on the following pages enumerate specific proposals and statutes.

	Arizona	Colo.	Idaho	Montana	Nevada	New Mex.	Utah	Wyo.
Commissions/ Studies	++	-	+	++	0	++	proposed and deferred	++
Surface Mining/ Reclamation	0	+	+	++	0	+	-	+
Land Use (mostly studies, not legislation)	+	-	-	++	++	+	-	+
Energy Conver- sion Facili- ties	+	-	0	++	+	0	0	-
Atomic Energy	0	0	0	0	0	0	0	-
Transportation	-	-	0	-	0	0	-	0
Utility Rate Structures	0	0	0	-	0	0	-	0
Energy-Related Taxation	0	-	0	-	-	0	0	+
Legal Standing for Citizens	0	-	0	-	0	-	0	0

All states have water and air pollution control statutes as required by federal law. The cites are listed on p. 22.

Key: + legislation passed

++ some environmental aims embodied in statute

- legislation proposed, but failed

0 no activity

COMMISSIONS/TASK FORCE/STUDIES	
ARIZONA	<p>SB 1014 OFFICE OF ENVIRONMENTAL PLANNING IN OFFICE OF THE GOVERNOR \$150,000; ends in two years (according to state legislator, certain to be renewed).</p> <p>SB 1015 (failed) Natural Resources Department and Coordinator UNIV. OF ARIZONA--RESEARCH TEAM WITH PILOT PLANT STUDIES ON SOLAR ENERGY.</p>
COLORADO	<p>COORDINATOR OF ENVIRONMENTAL PROBLEMS (not funded after the first year)</p> <p><u>COLO. REV. STAT. ANN. §132-1-9</u> (1963) (1971 Supp.)</p> <p>HB 1414 Energy Commission (failed)</p> <p>SB 205 Long-range coordinator in Governor's Office to project energy needs, etc. (failed)</p> <p>SB 43 Environmental Policy Act--to require environmental impact statements of public agencies and private industry (failed)</p> <p>SJM #1 MEMORIAL TO CONGRESS TO ESTABLISH NATIONAL ENERGY POLICY GOVERNOR'S TASK FORCE ON ENERGY--APPOINTED SPRING, 1973. No citizen or environmental representation of the main committee, only experts from each energy industry, agriculture and transportation.</p>
IDAHO	<p>ENVIRONMENTAL PROTECTION AND HEALTH ACT, <u>IDAHO CODE §39-101</u> (1948) (1972 Supp.) Coordination of agencies, enforcement of standards for the purposes of the act.</p>
MONTANA	<p>MONTANA ENVIRONMENTAL POLICY ACT, <u>REV. CODES OF MONT. §69-1501</u> (1947) (1971 Supp.). Established Environmental Quality Council--non-regulatory. INTENT: Each generation is a trustee of the environment for succeeding generations. (Unique policy.) PURPOSE: anticipate environmental problems, analyses, perceive alternatives and recommend preventative action.</p> <p>DEPT. OF NATURAL RESOURCES AND CONSERVATION, <u>REV. CODES OF MONT. §82A-1501</u> (1947) (1971 Supp.) Land use policy study underway.</p> <p>ENERGY ADVISORY COUNCIL (1973) Energy policy study being conducted.</p> <p>NATURAL RESOURCES TASK FORCE, to determine high priority natural resource research needs.</p> <p>UTILITY SITING COMMISSION (see Utility siting legislation)</p> <p>SJR 24 EQC to make study and legislative proposals for implementation of state energy policies.</p> <p>SB 143 (failed). Require Public Service to make long-range study on energy needs.</p> <p>MONTANA COAL TASK FORCE--Appointed 1972 by Governor Anderson--recommendations on surface mining, now law.</p> <p>NORTHERN GREAT PLAINS RESOURCE PROGRAM--Federal Dept. of the Interior study (projected evaluation--not what it could be).</p>
NEVADA	
NEW MEXICO	<p>ENVIRONMENTAL IMPROVEMENT ACT, <u>NEW MEX. STAT. §12-19-1</u> (1953) (1971 Supp.) 1972--reorganization of state agencies.</p> <p>\$30,000 to study plans for separate environmental agency (1972 Session Laws, p. 179).</p>

NEW MEXICO (cont.)	Study land use laws and practices--draft policy and statutes (same, p. 241. 1973--R & D on solar energy NEW MEXICO ENERGY TASK FORCE
UTAH	SB 240 Energy and power commission Committee to study resource depletion, pollution in energy and power fuels, examine future energy sources SJR 21 Utah Energy Study HB 185 Environmental Impact Assessment HB 254 Soil Conservation and Pollution Act HB 35 Dept. of Environmental Control study
WYOMING	WYOMING ENVIRONMENTAL QUALITY ACT, <u>WYO. STAT.</u> §§35.502.1 to 35.502.56 (1957) (1973)Cum. Supp.) \$100,000--Dept. of Environmental Quality: air, water, land reclamation and solid waste disposal NORTHERN GREAT PLAINS RESOURCES PROGRAM (see MONTANA)

} all deferred in committee

Note: All references to House Bills or Senate Bills refer to the 1973 legislative session.

Laws listed in capital letters passed.

Bills designated by lower case letters did not pass and are not law.

SURFACE MINING AND RECLAMATION LEGISLATION

ARIZONA	<p><u>ARIZ. REV. STAT. ANN.</u> §27-560 (1956) LESSEE HAS RIGHT TO USE AS MUCH SURFACE AS REASONABLY NECESSARY FOR OPERATION</p>
COLORADO	<p><u>COLORADO OPEN CUT LAND RECLAMATION ACT OF 1969.</u> <u>COLO. REV. STAT. ANN.</u> §92-13-1 et seq (1963) (1969 Supp.) \$50 PERMIT FEE: RECLAMATION IN THREE YEARS; NO PLANTING REQUIRED WHERE SOIL IS TOXIC, DEFICIENT IN PLANT NUTRIENTS, OR COMPOSED OF SAND, STONE, ETC. IF AFTER 10 YEARS TOXIC CHARACTER IS NOT GONE, THE OPERATOR IS RELIEVED OF RESPONSIBILITY (§92-13-6ii & iii).</p> <p>AMENDMENT TO ABOVE, 1973 SESSION §92-36-1 et seq "COMMERCIAL MINERAL DEPOSIT" EXPANDED FROM COAL TO INCLUDE SAND, GRAVEL, AND QUARRY AGGREGATE. LOCAL ZONING MAY PRECLUDE MINING AS LONG AS ACCESS IS NOT BLOCKED BY PERMANENT STRUCTURES (basically a procedure for local control or veto, which must remain flexible/reversible).</p> <p>Under this law, oil shale developers would not be required to revegetate because oil shalwaste is sterile.</p> <p>HB 1462 (failed to pass) Similar mining and reclamation bill.</p>
IDAHO	<p><u>SURFACE MINING ACT OF 1971.</u> <u>IDAHO CODE</u> §47-1501 et seq. (1948) (1973 Supp.) PERMIT PLANS MUST BE APPROVED BY STATE BOARD OF LAND COMMISSIONERS; REQUIREMENTS FOR GRADING AND EROSION CONTROL; REVEGETATION NOT REQUIRED WHERE IMPRACTICABLE DUE TO SOIL COMPOSITION (same weakness as Colorado law); RECLAMATION MUST BE COMPLETED WITHIN ONE YEAR OF ABANDONMENT (insufficient); RECLAMATION BOND UP TO \$500 PER ACRE. BOARD OF LAND COMMISSIONERS TO SET UP REGULATIONS, MAKE DISCRETIONARY DECISIONS SINCE NO LEGISLATIVE STANDARDS ARE SET FORTH. PUBLIC HEARING ON RECLAMATION PLANS IS UP TO DISCRETION OF THE BOARD. COVERS THE FOLLOWING: COAL, CLAY, STONE, SAND, GRAVEL, METALLIFEROUS AND NONMETALLIFEROUS TYPES OF ORES, AND ANY OTHER SIMILAR SOLID MATERIAL OR SUBSTANCE OF COMMERCIAL VALUE TO BE EXTRACTED. AMENDMENTS 1973 SUPP.</p>
MONTANA	<p><u>MONTANA STRIP MINING AND RECLAMATION ACT,</u> <u>REV. CODES OF MONT.</u> §§50-1034 to 50-1057 (1947) (1973 Supp.) BOND TO BE POSTED WITH PERMIT APPLICATION: \$200-\$2,500 per acre MIN. OF \$2,000. MUST BE RENEWED YEARLY. EROSION CONTROL AND VEGETATION REQUIREMENTS IF APPROPRIATE FOR FUTURE USE OF THE LAND. SPECIFIC LEGISLATIVE REQUIREMENTS BEFORE PERMIT MAY BE GRANTED. COVERS COAL, CLAY, PHOSPHATE ROCK AND URANIUM. MUST HAVE SPECIFIC WRITTEN APPROVAL OF PROPOSED WORK FROM THE SURFACE OWNER. SURFACE OWNER HAS ACTION FOR CONTAMINATION, DIMINUTION OR INTERRUPTION OF WATER SUPPLY DUE TO MINING OPERATION.</p>

<p>MONTANA (cont.)</p>	<p><u>STRIP MINED COAL CONSERVATION ACT</u>, 1973, SESSION LAWS CH. 325, to insure against coal wastage, and to minimize the possibility that reclaimed land will not be disturbed to recover a previously unmined seam.</p> <p>HB 238 (passed) EXTRACTION BY STRIP OR OPEN PIT MINING IS NOT A PUBLIC USE (therefore eminent domain may not be used for this purpose).</p> <p>HB 391 (failed to pass) termination of strip mining by July 1, 1973.</p> <p>HB 492 (failed to pass) moratorium on strip mining until studies completed.</p> <p>SB 382 (failed to pass) require strip mining operators to return reclaimed land to persons giving easement (important land use idea - to retain agricultural lands).</p> <p>SB 387 (failed to pass) require reclamation only on public lands (deferred in committee, not killed, would be backsliding).</p>
<p>NEVADA</p>	<p>Mining claim law 1971--Declared unconstitutional in June 1973 by State District Court--Requirement of maps with a filed claim held to be in conflict with less stringent federal requirements. Likely to be appealed to the State Supreme Court. (See <u>Mineral City Independent News</u>, Hawthorne, Nevada, June 13 and 20, 1973.)</p>
<p>NEW MEXICO</p>	<p><u>COAL SURFACE MINING ACT</u> (1972) <u>N.M. STAT.</u> §63-34-1 et seq (1953) (1972 Interim Supp.)</p> <p>COMMISSION ESTABLISHED TO HANDLE PERMIT APPLICATIONS.</p> <p>\$50 FILING FEE; RECLAMATION REQUIREMENTS SET BY COMMISSION--NO LEGISLATIVE STANDARDS.</p> <p>GRADING AND REVEGETATION, AS TECHNOLOGICALLY PRACTICABLE.</p>
<p>UTAH</p>	<p>SB 12 (failed to pass) Mined Land Reclamation Act (weak law, apparently death was no loss. It excluded oil and gas, was generally acceptable to mining interests.)</p>
<p>WYOMING</p>	<p><u>WYOMING ENVIRONMENTAL QUALITY ACT</u>, ART. 4 LAND QUALITY, <u>WYO. STAT.</u> §35.502.20 to 502.41 (1957) (1973 Supp.) No mining permit may be granted without written consent or waiver from the surface owner, and bond to cover damages. Permit fee \$100, plus \$10/acre bond, maximum of \$2,000. Surface owner has an action against operator for any water pollution, diminution or interruption of water supply due to surface mining operation. (Most of the legislative session was devoted to debate over surface mining laws--will carry over to future sessions.)</p>

LAND USE LEGISLATION	
ARIZONA	<p>SB 1331 LAND USE POLICY GUIDELINES--LAND USE POLICY STUDY OF ARIZONA AND LOWER COLORADO RIVER RESOURCES AREA \$100,000.</p> <p>SB 1026 AUTHORIZES INCORPORATED CITIES AND TOWNS TO ISSUE SUBDIVISION REGULATIONS. EFFECTIVE JANUARY, 1974.</p> <p>HB 2061 PENALTIES FOR VIOLATION OF SUBDIVISION PROVISIONS.</p> <p>HB 2165 (failed to pass) State Land Planning Commission.</p> <p>HB 2170 (failed to pass) County zoning and planning authority.</p>
COLORADO	<p>LAND USE COMMISSION--in existence, but it opposed all versions of new land use bill.</p> <p>HB 1122 (failed) eminent domain for parks and open space.</p> <p>HB 1459 (failed) upgrade emergency powers of the LUC above.</p> <p>HB 1460 (failed) strike the word "irreparable" from statute to increase opportunities for Commission to act.</p> <p>SB 377 (failed) major land use bill, gradually weakened and finally killed on the last day of the session.</p> <p>SB 205 (failed) long-range planning, coordinator for Governor's office to aid in policy formation</p> <p>HB 1118 (failed) same goals as SB 377.</p>
IDAHO	<p>SB 1111 Idaho Land Planning (failed)</p>
MONTANA	<p>HJR 9 ENVIRONMENTAL QUALITY COUNCIL TO STUDY LAND USE POLICY AND LEGISLATION. ASKS FOR APPOINTMENT OF MONTANA LAND LAW REVIEW TEMPORARY COMMISSION WITH INTERDEPARTMENTAL AND CITIZEN PARTICIPATION.</p> <p>SB 268 (failed) promote uniformity in land use planning by establishing State Board of Land Review.</p>
NEVADA	<p>SB 333 LAND USE PLANNING AGENCY--REQUIRES STATEWIDE LAND USE PLANNING PROGRAM AND PROCEDURES.</p> <p>SB 516 PRESERVATION OF NATURAL RESOURCES IS A CRITERION FOR MASTER PLANNING.</p> <p>SB 460 AID FOR CITIES AND COUNTIES FOR SUBDIVISION EVALUATION.</p> <p>SB 470 LOCAL LAND USE PLANS BY 1975 IF GOVERNOR GETS THE POWER TO DO THE PLANNING (perhaps a solution to federal and state conflicts --if no action taken within a designated period of time, the power to take action shifts.)</p>
NEW MEXICO	<p>HB 118 LAND USE ADVISORY COUNCIL \$35,000 for study, 7 legislators, 4 citizens.</p> <p>SB 312 ADVISORY COUNCIL ON ENVIRONMENTAL QUALITY. MORATORIUM UNTIL JUNE, 1974 ON STATE REQUIREMENT OF ENVIRONMENTAL IMPACT STATEMENTS UNTIL A DETERMINATION THAT THEY ARE IN THE PUBLIC INTEREST. (Backsliding)</p>
UTAH	<p>SB 130 (failed) Utah Land Use Bill (modeled after Florida law).</p> <p>HB 185 (failed) environmental impact assessment.</p>

LAND USE LEGISLATION (cont.)

WYOMING

LAND USE STUDY COMMISSION (1972) members just named, \$30,000.
HEA 121 (1973) \$100,000 appropriation for above commission.
WYOMING ENVIRONMENTAL QUALITY ACT WYO. STAT. §35-502.1 (1973 Cum.
Supp.)

AIR/WATER/LAND QUALITY DIVISIONS

7 APPOINTED MEMBERS, MUST MEET AT LEAST 4 TIMES A YEAR

STANDARDS FOR MINING PERMITS

PERMIT FEE \$100, plus \$10 per acre. Max. \$2,000.

RECLAMATION: STATEMENT OF PRESENT AND PROPOSED USE, PLANS FOR
CONTOURING MUST BE SUITABLE FOR PROPOSED USE.

MUST HAVE INSTRUMENT OF CONSENT OF THE SURFACE OWNER TO THE
MINING AND RECLAMATION PLAN. IF CANNOT BE OBTAINED, OPERATOR
MAY REQUEST A HEARING. COUNCIL MAY ORDER PERMIT ON FINDINGS
THAT (1) PLAN WAS SUBMITTED TO THE SURFACE OWNER, (2) WAS SUFFICIENTLY
DETAILED, (3) PLAN DOES NOT SUBSTANTIALLY PROHIBIT OPERATIONS OF THE
SURFACE OWNER, (4) PLANS WERE INCLUDED ON RECLAMATION FOR FUTURE
PROPOSED USE.

SITING FOR ENERGY CONVERSION FACILITIES

<p>ARIZONA</p>	<p><u>POWER PLANT AND TRANSMISSION LINE SITING COMMITTEE</u> <u>ARIZ. REV. STAT. ANN. §40-360 (1967) (1972 SUPP.)</u> COMMISSION TO ACT ON SITING PERMIT APPLICATIONS; COMPOSED OF STATE AGENCIES, REQUIRES 10 YEAR PLANS, HEARINGS, ALTERNATIVES AND JUSTIFICATIONS; FEES \$1,000 to \$10,000; SPECIFIC ENVIRONMENTAL FACTORS TO BE CONSIDERED (this kind of legislative stipulation increases basis for judicial review. See <u>Citizens to Protect Overton Park v. Volpe</u> (401 US 402 (1971))).</p> <p>Proposed dual purpose nuclear plant: electric generation plus desalinization of water. The latter would use two thirds of the electricity produced. Combination of state and federal funds with private utilities.</p>
<p>COLORADO</p>	<p>HB 1118 (failed to pass) Industrial site selection--attempt to regulate growth and control commercial and industrial activities in areas of critical ecological balance. Zones to be defined for development potential. (Separately introduced from SB 377, see Land Use, although similar concepts were embodied in both.)</p>
<p>IDAHO</p>	
<p>MONTANA</p>	<p><u>MONTANA UTILITY SITING ACT OF 1973</u> <u>REV. CODES OF MONT. §70-801 (1947) (1973 SUPP.)</u> HB 127 COVERS ELECTRICITY GENERATION, GAS PRODUCTION, LIQUID HYDROCARBONS, URANIUM ENRICHMENT PLANTS. CERTIFICATE REQUIRES SHOWING OF NEED, ALTERNATIVES, STEEP FILING FEES BASED ON TOTAL PROPOSED COST (\$30,000 and up) TO BE USED FOR INDEPENDENT EVALUATION OF SITES BY SITING COMMISSION; HEARING PROVISIONS, WIDESPREAD NOTICE REQUIREMENTS; JUDICIAL REVIEW PROVISIONS; VERY SPECIFIC STIPULATION OF ENVIRONMENTAL FACTORS TO BE CONSIDERED. (Excellent bill for environmental protection, but fails to deal with the issue of energy exportation--see, however, Governor Judge's views in letter to Bonneville Power Authority in Appendix.)</p> <p>HB 73 and HB 179 (failed to pass) prohibiting certain utilities from using commercial advertising. Penalties \$10,000. Important in terms of public policy regarding demand.</p>
<p>NEVADA</p>	<p><u>UTILITY ENVIRONMENTAL PROTECTION ACT</u> 1971 Session Laws, p. 554 PROVIDES FOR REGULATION OF LOCATION, OPERATION AND MAINTENANCE OF UTILITY GENERATION AND TRANSMISSION FACILITIES (Not as broad as the Montana law). PURPOSE: TO PROMOTE ABUNDANT SERVICE WITH DUE REGARD FOR PRESERVATION OF THE ENVIRONMENT. PERMIT REQUIREMENT.</p>
<p>NEW MEXICO</p>	

SITING FOR ENERGY CONVERSION FACILITIES (cont.)

UTAH	Statement of the Democratic Party of Utah urging a moratorium on power plant construction until their environmental impacts have been determined. Recommend exportation of coal rather than of electricity.
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WYOMING	According to <u>New York Times</u> article, "Public Control Grows in Land Use Revolution," Sept. 3, 1973, a power plant siting bill was defeated in the Wyoming legislature.
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NUCLEAR/ATOMIC ENERGY AND RADIATION CONTROL	
ARIZONA	<p>RADIATION CONTROL, <u>ARIZ. REV. STAT. ANN.</u> §30-651 (1964) Policy: to study atomic energy, adapt laws as conditions change. STANDARDS FOR TESTING RADIATION LEVELS, <u>ARIZ. REV. STAT. ANN.</u> §27-371 (1968) FORMATION OF ARIZONA AEC: TO PROMOTE TECHNOLOGY, <u>ARIZ. REV. STAT. ANN.</u> §30-653 (1972) (1972 SUPP.) WESTERN INTERSTATE NUCLEAR COMPACT: cooperative effort among Western states for development of nuclear energy for peaceful means. <u>ARIZ. REV. STAT. ANN.</u> §30-701 (1969)</p>
COLORADO	<p>RADIATION CONTROL AGENCY, <u>COLO. REV. STAT. ANN.</u> §66-26 (1963) (1971 SUPP.) Licensing required with public hearings, responsibility for sites rests with state government. <u>COLG. REV. STAT. ANN.</u> §66-28-9 (1971 SUPP.) UNLAWFUL TO POLLUTE WATER WITH RADIOACTIVE AND TOXIC WASTE. MAY APPLY TO COMMISSION FOR PERMISSION TO POLLUTE WHERE NO RISK OF SIGNIFICANT MIGRATION (of pollutants), AND ACTIVITY IS JUSTIFIED BY PUBLIC NEED. (Rio Blanco suit was based on this section, but the question remains: who decides "public need"?)</p>
IDAHO	<p>RADIATION AND NUCLEAR MATERIAL, <u>IDAHO CODE</u> §39-3001 (1972) POLICY: ENCOURAGE INDUSTRIAL AND ECONOMIC GROWTH OF THE STATE; R & D PROGRAM; STATE NUCLEAR ENERGY COMMISSION: STUDIES, SITE DECISIONS, LICENSING, no environmental requirements beyond safety of public.</p>
MONTANA	<p>RADIATION CONTROL, <u>REV. CODES OF MONT.</u> §69-5801 (1967) DEPT. OF HEALTH AND ENVIRONMENTAL SCIENCES; POLICY: MAINTAIN REGULATORY PROGRAM COMPATIBLE WITH FEDERAL STANDARDS; DEVELOP PROGRAM FOR PEACEFUL USES CONSISTENT WITH PUBLIC SAFETY AND HEALTH.</p>
NEVADA	<p>RADIATION CONTROL, <u>NEV. REV. STAT.</u> §459.100 (1963)</p>
NEW MEXICO	<p><u>N.M. STAT.</u> Ch. 12, Art. 9 Not applicable to transportation, mining, extraction of radioactive ores, or uranium. Concentrates regulated by federal agencies.</p>
UTAH	<p>RADIATION PROTECTION ACT, <u>UTAH CODE</u> §26-251 (1953) (1967 SUPP.)</p>
WYOMING	<p>SB 181 Nuclear or Atomic Detonations (failed)--would have prohibited use of nuclear or atomic energy devices without legislative consent. Penalty: up to \$5,000 and/or 1 year, plus damages. (Only bill to be introduced that tries to establish some state control over federal agency activity within the state's boundaries.)</p>

	TRANSPORTATION (Not a complete tabulation, but nothing seems to be passing in the region.)
ARIZONA	SB 1023 Department of Transportation, releases Highway funds for general transportation uses. HB 2007 Department of Transportation
COLORADO	HB 1169 D.O.T. to advocate and regulate public transportation. September 7, 1973 vote on rapid transit funding plan for Denver and surrounding counties passed by 66,713 to 49,897. (There are almost 600,000 voters in the city of Denver alone, so there is little indication for the legislature to know how most of their constituents think on the matter.)
IDAHO	
MONTANA	HB 259 requires all railroad locomotives to be powered by electricity only (still have to burn coal to produce electricity at this time).
NEVADA	
NEW MEXICO	
UTAH	HJR 27 Constitutional amendment: highway funds to be diverted in part for mass transit. HB 27 fuel taxes for mass transportation. Proposal for no-fare buses.
WYOMING	

UTILITY RATE STRUCTURES	
MONTANA	HB 121 (failed) require public service to use original cost of utility property as rate base.
UTAH	SB 102 (failed) utility rate adjustment.

LEGAL STANDING FOR CITIZEN ACTION	
COLORADO	HB 1338 (failed)
MONTANA	HB 162 Montana Environmental Protection Act--standing for any legal entity (failed)
NEW MEXICO	ENVIRONMENTAL IMPROVEMENT ACT <u>N.M. STAT. §§12-12-1 to 12-12-14</u> (1953) (1971 SUPP.) Agency for environmental management and consumer protection, power to sue and be sued. HB 365 (failed) standing granted with a \$500 bond provision.

TAXATION/DEPLETION ALLOWANCES/SEVERANCE TAXES

ARIZONA

COLORADO

HB 1433 (failed) bill to repeal state oil and gas depletion allowance under income tax law
SB 359 (failed) pollution control revenue bonds--for use by manufacturing, industrial, commercial enterprises and utilities to plan for pollution control facilities.

IDAHO

MONTANA

HB 509 INCREASED BASE FOR DETERMINING STRIP COAL MINING LICENSE TAX: NOW 12¢ to 40¢ per ton (100 to 325% increase)
HB 122 (failed) value assigned to public utility property by Public Service Commission to be used for assessment purposes.
HB 166 (failed) reclamation costs not deductible in computation of net proceeds tax.
HB 524 (in committee) eliminating deduction allowed for net operating losses in computing income for tax purposes.
HB 518 (postponed until 1974) severance tax on all oil and gas. 13% value of all oil and gas: 10% to state, 90% to counties and school districts.

NEW MEXICO

HB 67 (failed) privilege tax on gas produced by coal gasification.
HB 70 (failed) privilege tax on electricity: 1 mill/kilowatt.
HB 431 (failed) increase severance tax on uranium and coal: from 1% to 2.338%. Decrease oil and gas tax: from 3% to 2.338%.

NEVADA

UTAH

WYOMING

HB 152 (failed) mineral severance tax: increase from 1% to 3%. Half of revenue for general fund, half for school fund.

HB 97 RESOURCES INDEMNITY TRUST ACT (enacted). Tax on gross value of production of nonrenewable resource extracting industries--to be held in trust for long-range environmental improvement. \$25 annually + .5% of gross value at time of extraction (if over \$5,000).

AIR POLLUTION CONTROL LEGISLATION IN THE ROCKY MOUNTAIN STATES

ARIZ. REV. STAT. ANN. §36-770 et seq; 36-1701 to 1719 (1956) (1967 Supp.)

COLO. REV. STAT. ANN. §66-29-2 et seq (1963) (1969 Supp.)

IDAHO CODE §39-101 et seq (1947) (1973 Supp.)

REV. STAT. OF MONT. §69-3901 et seq (1947) (Replacement Volume 1969)

NEV. REV. STAT. §445.400 et seq (1969)

NEW MEX. STAT. §12-14-1 (1953) (1971 Supp.)

UTAH CODE §26-24-1 et seq (1953) (1973 Supp.)

WYO. STAT. §35-502.16 (1957) (1973 Supp.)

WATER POLLUTION CONTROL LEGISLATION IN THE ROCKY MOUNTAIN STATES

ARIZ. REV. STAT. ANN. §36-1851 et seq (1956) (1972 Supp.)

COLO. REV. STAT. ANN. §66-28 et seq (1963) (1967 Supp.)

IDAHO CODE §39-101 et seq (1947) (1973 Supp.)

REV. STAT. OF MONT. §69-4801 et seq (1947) (1973 Supp.) (Montana Water Use Act)

NEV. REV. STAT. §445.010 (1969)

NEW MEX. STAT. §75-391 to 12 (1953) (1971 Supp.)

UTAH CODE §73-14-1 et seq (1953) (1973 Supp.)

WYO. STAT. §35-502.18 (1957) (1973 Supp.)

III. STATUS OF LEGISLATION IN THE ROCKY MOUNTAIN STATES

Energy supply and consumption are influenced by many factors, direct and indirect. Recognition of the complex elements that affect energy questions is a prerequisite to the formulation of energy policy. However, no state in the Rocky Mountain region has yet developed a comprehensive, integrated policy on energy planning.

Some states have passed strong regulatory legislation in particular areas-- Montana and Arizona with utility siting laws and Montana with surface mining controls. The value of such legislation is not questioned here, but there is still a need for consideration by the legislative branch of a state's entire range of energy uses and resources.

This section compiles and discusses legislation of the eight Rocky Mountain states in a number of energy-related categories: commissions and task forces, surface mining, land use, energy conversion facilities, atomic energy, conservation of energy, and legal standing for citizen action. These sections are followed by an inquiry into the possibility of a regional approach to these energy issues.

A. Commissions, Task Forces, and Studies

Though legislative records of the Rocky Mountain states do not reflect coordinated energy policies, there are sure signs of growing concern with energy issues. Commissions and task forces are being created to study energy problems and how states can respond to them. In general, these groups are expected to make recommendations rather than having regulatory powers of their own. Therefore their effectiveness will vary according to the composition of the commissions and the receptiveness of legislators and administrators who will receive the reports. Another factor that can affect the quality of recommendations is the magnitude of funding and staffing.

The 1973 Arizona legislature appropriated \$150,000 for an Office of Environmental Planning within the Governor's Office. The Office was created for two years, with renewal to be considered in 1975. In 1972, Idaho's state agencies were coordinated under the Environmental Protection and Health Act, but there were no provisions for energy or environmental studies.

Colorado rejected several proposals for legislative study groups: an energy commission and long-range coordinator to project energy needs for the state. There was a Coordinator of Environmental Problems established in 1971, but funding was discontinued after the first year. A legislative/citizen study called "Options for the Future" was completed in March, 1972.² The study called for an energy advisory board and means for research to maximize the use of energy resources. Other recommended state actions: change in utility rates to make conservation of fuels and power desirable, reward anti-pollution efforts, revise tax structure to maximize state revenue from natural resources taken from state lands, minimize undesirable waste, encourage use of incinerable wastes for power production, encourage development of low-polluting fuels, and encourage development of the fast breeder nuclear reactor. These recommendations have yet to be followed.

A Governor's Energy Task Force was appointed by Governor John Love before he left office, and has been continued under Governor John Vanderhoof, but it has been met with some disappointment because there is little citizen or environmental group representation on the Task Force, and none on the Executive Committee of the group. In addition, the group has met rarely.

Montana's legislature has been the most active of the eight on energy/environment issues, with the creation of the Montana Environmental Policy Act (1971), Department of Natural Resources and Conservation (1971), Montana Coal Task Force (appointed by Governor Anderson in 1972), Energy Advisory Council (1973), Utility Siting Commission (under Montana Utility Siting Act of 1973), and a Natural Resources Task Force. Montana comes closest of any state in the region to determining policy on environmental issues and shaping legislation to meet those policy needs. Recommendations by the Coal and Natural Resources Task Forces in the areas of surface mining regulation and utility siting have become law, and an Energy Policy Study is being conducted at the present time. This study includes "consideration of the full range of possible energy sources, optimal efficiencies in extraction, conversion and transmission, the conservation of use, and alternatives for the administration and regulation of an energy industry." ³

New Mexico's legislature passed an Environmental Improvement Act in 1971 calling for a reorganization of state agencies, a study of plans for a separate environmental agency, and a study of land use laws and practices. An Energy Task Force has been created, with representation from government agencies, industry, public interest and environmental groups. The Task Force's mandate is to take a broad perspective on energy issues, but the funding of \$75,000 covers only basic staff expenses and the group's capacity may prove to be quite limited.

Utah deferred a number of proposals in committee until next year's legislative session: Energy and Power Commission, Utah Energy Study, Environmental Impact Assessment, Soil Conservation and Pollution Act, and a Department of Environmental Control Study. In 1973, the Wyoming legislature created a Department of Environmental Quality, with divisions covering air, water, land reclamation, and solid waste disposal.

Potential coal developments in Montana, Wyoming, and North Dakota are the subject of a federal Department of Interior study called the Northern Great Plains Resource Program. Representatives from these three states, as well as from South Dakota and Nebraska, participate in this study to some degree.

In general, these study and advisory groups in the Rocky Mountain region are composed of representatives from various state agencies concerned with environmental and industrial regulation. Sometimes there are requirements for public interest representation. In Wyoming, however, it was decided to exclude both industry and environmental group participation. Montana's Environmental Quality Council has eight legislative members and four appointed ones.

States often do not have the funding, or do not allocate it, to support research on alternative energy sources. However, research on solar energy is being conducted in New Mexico and at the University of Arizona, supported by various funding sources. An interim legislative committee in Idaho is looking into potential use of geothermal energy.

It is difficult to predict the effectiveness of a task force by examining the statutory provisions: group composition, amount of funding, legislative mandate. There can be a wide discrepancy between a description on paper and the actual situation. This study shows that some states are taking steps to create task forces on energy issues; however, the quality of the analyses that will be produced is problematical.

B. Surface Mining and Reclamation

Surface mining law requirements vary enormously throughout the Rocky Mountain states, from a lack of regulation in Arizona and Utah to very stringent standards in Montana. Several factors determine the nature of the legislation, the most important being the responsibilities placed on the prospective mining operator. For example, in some states a rigorous examination of proposed plans is required before a permit may be granted; in others, the operator's duties do not come into being until mining activity has ceased.

Another important aspect is breadth of legislative coverage over the kind of materials to be mined. Though it may often be desirable to have separate regulations for separate minerals, laws covering surface mining in the Rocky Mountain states vary as to whether they include one or more materials. (As a political reality, it may be easier to pass a law regulating only one mineral industry at a time.) Colorado's law was amended in 1973 to cover sand, gravel and quarry aggregate in addition to coal. Idaho law regulates mining of coal, clay, stone, sand, gravel, metalliferous and non-metalliferous types of ore, and other similar solid materials of commercial value. Montana's surface mining regulations pertain to coal, clay, phosphate rock and uranium. Only coal is regulated in Wyoming.

To date there are no controls over deep or surface mining of oil shale, and, except for Montana, none over uranium. These two energy resources will be a focus for development pressure as the fuel shortage becomes more critical. The failure to prescribe standards for oil shale and uranium mining (of any kind) before it becomes widespread will result in ecological problems that future legislation cannot cover and control.

Permit Procedures

Legislation in five Rocky Mountain states requires an application for a mining permit to be made to a state board, accompanied by a filing fee and reclamation bond. In Colorado, a one-year permit is granted after approval of the application. In Idaho, maps and mining and reclamation plans are also required. However, neither state statute elaborates standards for approval, thereby leaving issues of environmental quality to the discretion of the board. Since there is no direct electoral control over an appointed board, the legislation itself should have contained standards by which to judge permissible mining activities if reclamation was to be guaranteed.

Montana's law requires an annual permit application, with enumerated standards for assessment of potential mining areas. It goes so far as to say "certain lands because of their unique or unusual characteristics may not be mined under any circumstances." (Rev. Codes of Mont. ch. 325 §2(1) (1973) See Appendix) No other surface mining law in the region explicitly

recognizes that environmental damage may be a controlling factor in the decision to mine resources. In Wyoming a permit must be granted unless certain factors are found to be true--irreparable damage to the environment is one. The difference between these two stipulations is that in Montana the burden of meeting environmental standards is on the mining operator; in Wyoming it appears to be incumbent on the board to decide that such damage will occur. As in a trial proceeding, the advantage lies with the party who has no burden to sustain. Not only is the burden of proof in Wyoming left to the board, but also the definition of "irreparable damage" is left to their discretion. Both these factors tend to mitigate against environmental protection.

The annual application process gives the Montana permit board continued control over the actual mining operation. If the approved plans are in any way disregarded, there is power to revoke or refuse to renew the permit. In contrast with Montana and Colorado only a single permit proceeding is necessary in Wyoming. Under all these statutes operations may begin as soon as the permit is granted.

Mining Plan

The laws of Colorado, Idaho, Montana, New Mexico, and Wyoming require a description of the mining operation and land to be disturbed by surface mining. Generally the legislation calls for a physical description so the area can be accurately located.

Montana's law is by far the most specific in terms of what it requires of the applicant. It states that the board must analyze a number of ecological factors in order to evaluate the potential impact of the mining operation. The applicant must provide such information as past and present uses of the land, water sources and supplies to be affected, annual rainfall, wind speed and prevailing direction, and plant varieties found in the area.

There are no funding provisions for independent analyses by the board prior to granting permits in any of the Rocky Mountain states.

Reclamation Plan

The magnitude of fees and bonds reflects a legislature's intent regarding the duties of the mining operator to reclaim mined lands. The amounts in the states under consideration are filing fees of \$50 to \$100 and the following reclamation bond rates: Colorado--\$200 per acre, Idaho--maximum \$200 per acre, Montana--\$200 to \$2,500 per acre (minimum of \$2,000 must be provided), New Mexico--\$10 per acre, Wyoming \$10 per acre (with a maximum of \$2,000). The contrast between Montana's minimum \$2,000 bond and Wyoming's maximum of the same should be noted.

The Sierra Club estimates average reclamation costs at \$3,500 per acre of disturbed land.⁴ Only Montana's bond requirement is sufficient to enable the board to attempt reclamation should the operator fail to do so. However, since reclamation in semi-arid and arid climates is still an unproved art, actual costs are not quantifiable.

The statutes considered here require submission of plans for grading, top-soiling, and revegetating, and specify a time limit for completion. Idaho's legislature expects reclamation to be completed in one year. Montana holds performance bonds for at least five years, until the reclamation requirements are met. These requirements are far from adequate in light of a National Academy of Science report that concludes reclamation may take 50 to 200 years, and in arid climates may not be possible at all.⁵

Several laws have exceptions to the revegetation requirements, where "not practicable" or not "economically or technologically feasible" (Colorado, Idaho, New Mexico, Wyoming). This generalized exception may relieve the operator of all responsibility after a certain time elapses. It is not clear what "economically feasible" is supposed to mean, since any reclamation effort will cost more than none. Even the higher reclamation cost estimates amount to only a few cents per ton of mined material. It must be remembered that if mining is allowed where reclamation potential is in doubt, successful reclamation may not be achieved despite legislative intent.

The goal of reclamation is to reestablish a productive and self-sustaining ecosystem that can support the original use of the land or an equivalent one in terms of ecological productivity and stability. Montana and Colorado allow the mining operator to determine what the future land use will be, and reclamation plans are geared to that decision. A state could, however, reserve such choices for itself in order to implement land use plans.

Emphasis on reclamation results is a more meaningful standard than a time deadline. Environmental degradation can best be prevented by a requirement of proof that reclamation is possible before mining is permitted.

Protection of surface owner's rights

Rights to surface land use and mining rights are frequently owned by different parties. There is usually a settlement between the parties, a lease or a sale, before mining operations begin. However, Montana and Wyoming now require the written permission of the surface owner before surface mining for coal is allowed, so in the case of a failure to settle, the mining company may not resort to condemnation proceedings. Wyoming, however, allows the requirement of a signature to be waived if the mining operator can demonstrate that unsuccessful attempts to obtain permission were made. (This appears to counter the original intention.)

Both states give the surface owner legal standing for a damages action against the mining operator in the event of contamination, diminution, or interruption of the owner's water supply.

If reclamation arrangements are not to be coordinated with state land use plans, perhaps legislation could require the surface owner who leases his property to join with the operator in the determination of future use. A farmer might better know the conditions necessary to turn mined land into productive agricultural land.

Public input

There are provisions under surface mining laws permitting some degree of public input into the application proceeding. Idaho and Wyoming laws allow interested parties to make a limited appearance at the permit hearings. In Colorado a hearing is held at the discretion of the board's executive director. New Mexico allows any person to appeal a permit-granting decision through the courts. Montana's statute gives a resident the opportunity to file a statement saying that provisions of the law are not being met, and then to bring an action to enforce compliance. Montana's strip mining and reclamation law has very explicit environmental goals and guidelines. If they are well enforced, the need for public vigilance is less than in a state where standards are left to the discretion of the board.

At present, legislation in the Rocky Mountain states does not make the public a party to a surface mining permit proceeding. It would be possible for legislation to provide that the proceeding be an adversary one, with the public interest represented by an appointed attorney. Under this system the burden of persuasion might be placed on the party urging development, as on a plaintiff in a civil suit. At the very least there is a need for well-publicized public hearings on proposed surface mining operations. However, the public interest can also be protected, at least in part, by enumerated environmental standards within the statute itself, as illustrated by the Montana law. Under New Mexico air quality laws, citizens have a right to cross-examine permit applicants and their expert witnesses in hearings. This approach could be applied to mining, siting and other permits.

Conclusion

Surface mining legislation currently regulates permit and reclamation requirements and guidelines. Three points which could significantly strengthen such legislation are not generally recognized at this time:

- (1) that legislation include explicit ecological objectives and standards in order to protect environmental quality;
- (2) that demonstration of successful reclamation potential be a prerequisite for strip mining operations;
- (3) that reclamation requirements be integrated with land use plans.

C. Land Use

The scope of land use planning goes beyond energy resource development, dealing with basic attitudes and practices which we incorporate in the way we treat our environment. Therefore, land use legislation is a useful vehicle for the examination of priorities and options that must be considered before major developmental decisions, including energy-related ones, are made. As has been suggested in earlier sections, reclamation requirements and guidelines for the siting of energy conversion facilities are two energy-related activities which can easily be examined through a land use oriented methodology. More generally, land use decisions, stemming from a broad range of policies, have a direct bearing upon the production of energy.

Not only do land use decisions affect the way in which we produce energy, but the same broad land use policies can have a profound effect upon energy

consumption as well. The outcome of transportation/land use policies can well alter energy consumption patterns, for example.

Land use has traditionally been controlled by local administrators, utilizing zoning mechanisms. Recently, there has been a trend toward a broader land use decision-making base, notably a transfer from the local level to regional or state levels.

The federal government has also begun to participate in this field through a series of pollution oriented guidelines, all bearing directly upon land use, to which the states must adhere. However, very little land use legislation has passed in the Rocky Mountain region, although the topic has been the subject of much debate in the various state legislatures. Arizona did appropriate \$100,000 for a study of land use policy in Arizona and the lower Colorado River resources area; it also authorized a greater amount of local control over subdivision control requirements.

In Colorado large amounts of funding have gone into a series of studies, all seeming to end with yet another study and very little action. In 1971, the state legislature in Colorado passed a bill which declared that land use decision-making was simply a matter of local governmental concern. In 1973 Colorado's legislature dealt with a multi-faceted land use bill, defeating the measure on the last day of the session, following lengthy debate and consideration of numerous amendments. A tough industrial siting bill was also defeated in Colorado's 1973 session.

Idaho refused an "Idaho Land Planning Act," but Montana authorized their Environmental Quality Council to study land use policy and legislation. A land use planning agency was established in Nevada, and the state also authorized financial aid for cities and counties to better evaluate subdivision development. In addition local governments are required to generate comprehensive land use plans by 1975, or the state (Governor's office) will require adherence to a state model. This usurpation of authority by a higher level of government might offer a parallel at the federal level as well. For example, the federal government could issue minimum guidelines and procedures in land use control, and require that individual states adapt to the particular policies within a specified period of time. A lack of action by the states would precipitate federal control. This mechanism would give local governments the first opportunity to plan the use of their land, with respect for local determination, yet the method insures that a comprehensive plan will be established.

New Mexico has created a Land Use Advisory Council composed of seven legislators and four citizens, as well as an Advisory Council on Environmental Quality. The state has passed a moratorium on a state requirement for environmental impact statements until June of 1974. At that time it will be determined if such impact statements are "in the public interest."

A land use bill was rejected by the Utah legislature in 1973. Members were appointed to the Wyoming Land Use Commission and were funded \$100,000 by the legislature. The Wyoming Environmental Quality Act passed in 1973 does not address land use issues.

Although land use legislation of a significant nature was not adopted by many of the Rocky Mountain states this past session, perhaps legislators gained knowledge and perspective of the problems, and hopefully began to establish the priorities that must be faced in forthcoming sessions. And in that context of land use, energy-related questions such as these must be examined: the relation of surface coal to deep mining techniques; the location of electrical generating plants in relation to mining operations; and energy production in general must be considered within the broader context of social attitudes toward growth and environmental degradation. These factors are inherent in any land use legislation.

D. Energy Conversion Facility Siting

Utility siting is a subset of land use planning: the locating of generating plants, conversion and gasification facilities, as well as transmission lines and pipelines. A major policy issue to consider is whether plants should be located near the fuel source or the load centers. Since the Rocky Mountain states have few large urban centers, this question of plant location might become a focal point for regional policy on resource development and exportation of electricity and/or gas from coal.

The Democratic party in Utah made a resolution two years ago to export coal rather than build more electrical conversion facilities within the state. Preference for coal export over conversion facilities in Montana is also the editorial policy of the Billings Gazette. In addition, the National Academy of Science study on surface mining questions the wisdom of mine-mouth facilities in the Rocky Mountain region. Water may be in insufficient supply to support such facilities, and the study expresses concern over massive water diversion schemes.⁶ (It should be noted that water is a key factor in energy development in the Rocky Mountain states, though it is not treated in detail in this paper.)

Coverage

Arizona (1972), Montana (1973), and Nevada (1971) are the only Rocky Mountain states with utility siting laws. Arizona's statute covers plants and transmission lines for thermal-electric, nuclear, and hydroelectric facilities over 100 megawatts, or costing over \$50,000. Montana's law covers the widest variety of conversion facilities: electrical generating facilities over 50 megawatts, or a cost of \$250,000; gas--capacity of 100 million cubic feet per day or \$250,000; 50,000 barrels of liquid hydrocarbons per day or \$250,000; facilities for uranium enrichment; transmission lines and pipelines. Nevada's statute has the broadest general coverage since it regulates construction of telephone, telegraph, and television equipment, buildings and facilities; water storage and transmission facilities; sewer transmission and treatment facilities; as well as utility and electricity generation and transmission facilities.

Licensing Body

The Arizona Power Plant and Transmission Line Siting Committee is composed of representatives from state agencies, citizen and county members and an architect. In Nevada, the Public Service Commission is the licensing body.

The controlling body under Montana's statute is the Natural Resources and Conservation Board. The composition of these commissions can greatly affect the decisions that are made; therefore explicit environmental standards are as important in the field of utility siting as in mining legislation. (See Environmental Criteria later in this section.)

Planning Period

Unlike surface mining permits that may be executed immediately, utility siting may involve a waiting period from the time the application is granted until actual site construction is begun. Montana's law stipulates a two-year waiting period to allow changes in technology and environmental safeguards to be incorporated into the plans. Projected ten year plans must be filed annually. The Arizona statute does not mention a waiting period, but it does require the filing of long-range, ten year plans by the utility companies. Nevada requires neither.

Filing Fees

The magnitude of the utility siting filing fee is indicative of the amount of effort to be undertaken by the licensing body to make an independent appraisal of proposed sites, first choice and alternate locations. This differs from surface mining permit fees, which are minimal. The mining permit fees are not substantial enough to fund analysis of proposed mining sites, and alternate funds are not provided in any of the eight Rocky Mountain states. Siting commission fees are used for environmental analysis, and in the case of Montana, also for analyses of the potential socio-economic impacts of a major installation. Fees in Arizona range from \$1,000 for a transmission line to \$10,000 for a new plant. Nevada does not require fees. Montana has a fee scale based on the projected cost of the facility:

<u>Cost of Facility</u>	<u>Filing Fee</u>
Less than \$1,000,000	3% of cost
\$1,000,000 to \$20,000,000	\$30,000 plus 1% of excess over \$1,000,000
\$20,000,000 to \$100,000,000	\$220,000 plus .5% of excess over \$20,000,000
\$100,000,000 to \$300,000,000	\$620,000 plus .25% of excess over \$100,000,000
More than \$300,000,000	\$1,120,000 plus .10% of excess over \$300,000,000

For example, a new plant at Colstrip, Montana has an estimated cost of \$368,668,000. The fee would be \$1,188,668.

(Source: Albert C. Tsao, Administrator, Energy Planning Division of the Department of Natural Resources and Conservation, Helena, Montana)

Public Participation

Often sites for utility construction are not revealed until the decision is made final. One reason for such secrecy given by utility companies is to prevent land values from rising before the site can be purchased. However, land use issues that are involved in utility siting are of vital public interest and should be aired before a proposal becomes a reality.

In all three states any interested person may make a limited appearance at the licensing hearing--in other words, give testimony. Montana and Nevada require service of notice of the hearing on municipalities and heads of government in the area, including agencies responsible for environmental and land use concerns. In Nevada the hearing may be dispensed with if no protests are filed.

If there are several agencies that must grant licenses before construction can begin, such as air and water pollution control boards, the question remains whether the siting commission's hearing should incorporate all such procedures, or if the industry should have to go through a series of hearings that may in some respects be repetitive. The simplified procedure generally will give the advantage to the industry, whereas environmental concerns may be better dealt with in the more elaborate setup. At present, siting legislation does not require a coordinated procedure; it merely invites input from pertinent agencies.

Long-term Planning

A major issue in energy conversion facility siting is sufficient advance planning in order to anticipate and make provisions for environmental needs such as choosing a location with minimum adverse impacts, careful selection of transmission routes and corridors, waste disposal problems (especially for nuclear powered plants), design and landscaping, and perhaps eventually coordination with energy use policies. Arizona's statute calls for submission of ten year plans by utility companies describing proposed facilities, capacity, type of fuel to be used, sources of fuel and water, size of transmission lines, and estimated dates of operation. In Montana, the utilities must submit an annual ten year plan with information on facilities to be built and removed from service, as well as efforts to cooperate with environmental agencies to minimize environmental problems. Nevada, the only other state with a facility siting law, has no similar requirement.

Long-range planning allows time to examine actual need for additional facilities, to locate sites where little environmental degradation will occur, and to incorporate the latest technological advances toward safety and pollution control in plans for new facilities.

Environmental Criteria

As in surface mining legislation, the legislative enumeration of environmental standards is the best guide to the quality of the statute. Specific concerns such as the uniqueness of the area, alternative uses for the site, and wildlife needs must be considered in Montana. Montana and Nevada statutes both require findings of a basis for need, nature of the probable environmental impact, a conclusion that the proposed site will have minimum adverse environmental impacts, and conformity to other agency standards. Montana's statute includes an extensive list of factors to be further considered by the siting board--energy needs (social benefits, desirability of alternative sources of energy), land use impacts, water resource impacts, air quality impacts, radiation and noise impacts. This law takes a broad perspective on potential effects of energy facility construction, beyond those of the physical environment to those of the socio-economic and cultural environment as well.

Scope of Judicial Review

In Arizona and Montana anyone may file for judicial review to enforce compliance with the provisions of the siting law. Nevada permits a limited standard of review, to determine whether the commission is acting within its authority. (For expanded discussion of standards of review, see Jurisdiction).

Other Issues

Some questions that deserve a great deal of attention are in the realm of policy making. Should the need for facilities be determined on the basis of national energy desires and plans, or should the state and local siting boards play a larger role in the decision of how much energy they wish to provide? Should a state be able to refuse to produce electricity or other energy for exportation to avoid local environmental degradation?⁷

A further question is whether a single board should have the power to regulate as well as plan future development. Regulation and planning may contain inherent conflicts of interest. This may be a particular problem under the Nevada statute where the Public Service Commission which regulates the utilities is also responsible for future site construction.

Also, planning should objectively identify all resources and values, and examine gains and losses in the framework of "alternative futures." The people of a state should have privileges in controlling such futures and options.

E. Nuclear/Atomic Energy and Radiation Control

Radiation control for health and safety purposes is within the power of the states. However, there is a potential complication because the use of nuclear materials is under the jurisdiction of the Atomic Energy Commission, a federal agency. It is not at all clear when or if a state may exercise control over atomic activities within that state's boundaries.⁸ Wyoming was the only state to see proposed legislation in 1973 about such state control. The bill (which failed to pass) would have required state legislative consent for any use of atomic energy devices.

All the Rocky Mountain states except Wyoming have statutes that prohibit radioactive pollution, but there is no control over the activities that might cause it. Colorado and New Mexico have been sites for experimental nuclear blasting to facilitate the recovery of natural gas, but since the states consented to the blasts there was no test of AEC's power. However, a citizen suit in Colorado over the Rio Blanco blast did establish the fact that a state court had jurisdiction over the case, a partial victory even though the blast was not prevented.

F. Conservation of Energy Measures

There are several approaches a state can take to influence the consumption of energy. Short of prohibiting products and activities, the state can employ direct and indirect methods to affect transportation, public policy on energy use, energy resource taxation, building codes, lighting codes, and recycling.

Arizona, Colorado and Utah rejected measures that would have opened the state highway funds for the development of mass transportation systems, even though this was achieved on the national level this year. However, a September vote in the greater metropolitan area of Denver approved sales tax funding for a rapid transit system (which will also require federal aid).

In addition to the establishment of alternatives to the automobile, there are efforts being made to establish priorities for the use of fuel. The realities of mandatory allocations and severe shortages make this very pressing. Nothing of this kind has been proposed as legislation in the Rocky Mountain area, but Tennessee passed a resolution asking fuel suppliers to give priority to emergency vehicles in case of fuel shortage.⁹ The bill that would require the same was postponed until next year's session. In the Rocky Mountain region fuel for agriculture is of primary importance, although there has been no legislative recognition of this fact. The Indiana legislature adjourned without considering a bill to prohibit gas utilities from curtailing deliveries to residential, medical, or educational consumers until service to industrial and commercial consumers had been curtailed to a minimum level. More of this kind of legislation is certain to be introduced in the future as decisions about energy allocation become more critical, as they already have.

Texas considered a resolution for a cutback in promotional advertising by utilities. No action was taken in Minnesota on a proposal to require manufacturers and distributors of refrigerators, freezers, ovens, air conditioners, hot water heaters, and highway motor vehicles to post energy consumption rates on these articles. Minnesota's bill also included a requirement for architects to disclose the amount of energy that a new building would need for heating, cooling, and lighting, as well as to provide their drawings. As the cost of energy rises, the consumer will need and want this kind of information in order to make informed choices about his/her rate of energy consumption.

Taxation is an indirect influence on energy use. It can be employed to discourage or encourage certain activities. Most legislative proposals related to taxation and energy made this year concerned severance taxes and depletion allowances: to increase the former and minimize the advantages of the latter. Montana was the most active in this area, seeking to limit tax advantages that have served to encourage development in the past. Again, very few measures became law, but it is likely that such proposals will increase rather than diminish.

Another potential control over energy consumption is a change in utility rate structures. At the present, unit costs of energy decrease as consumption increases, thereby encouraging "bulk" use. The assumption that energy costs decrease as the volume of energy produced increases may no longer be valid. If impact on the environment begins to be reflected in the rate structure, patterns of consumption may begin to change.¹⁰

G. Legal Standing for Citizen Action

In the absence of adequate procedures for public input into the decision-making processes on energy and energy-related development, the only power left to the ordinary citizen is judicial challenge. However, the legal standing to bring challenges must often be established by a legislative act. A party who is, or stands to be, injured by a certain decision or action always has the right to sue, but in most cases an interested party may not be able to establish a similar right. Provisions for legal

standing for citizen action failed in Colorado, Montana and New Mexico. In 1971, New Mexico established an agency for environmental management and consumer protection with the power to sue and be sued, but this still requires a citizen's cause to be championed by a state agency.

In 1973, only South Dakota passed legislation granting standing for environmental class action suits.¹¹ Legal standing has been established on a case-by-case basis, as in the Rio Blanco suit, but it is not yet a right granted by statute.

H. Regional Approach

Since many environmental problems are common to the Rocky Mountain states, it is important to consider the possibilities for interstate cooperation with regard to energy resource development and environmental quality. Some of the advantages would include (1) regional sensitivity to particular environmental needs that might be overlooked or underestimated at the federal level, (2) a stronger bargaining position by the states for environmental standards and guarantees in case of strong national pressure for energy resource development, and (3) an avoidance of industry "forum-shopping"--industries trying to locate in states with the fewest restrictions on development.

There are drawbacks to a highly cooperative interstate arrangement: (1) there is a parallel danger that a regional system could be as insensitive to local concerns as a national one; (2) the different political climates in the states might make true cooperation in the energy area impossible; and (3) procedural and jurisdictional factors would limit the scope of cooperative effort.

A regional approach to energy problems might better be achieved by parallel efforts among the states, rather than through a regional organization. At the very least, there can and should be an active information exchange among the states on proposed and approved legislation, as well as ideas on energy policy.

The Council of State Governments is taking steps in this direction with regional meetings of state legislators interested in designated topics such as land use or energy resources. The Federation of Rocky Mountain States has also put energy high on its list of priorities. This kind of forum and clearinghouse for discussion should be encouraged as well as expanded to include the public sector.

PART IV. JURISDICTION/DECISION-MAKING

"When I use a word," Humpty Dumpty said, in a rather scornful tone, "it means just what I choose it to mean--neither more nor less."

"The question is," said Alice, "whether you can make a word mean so many different things."

"The question is," said Humpty Dumpty, "which is to master--that is all."¹²

A. Introduction

One of the basic issues of energy policy formation is jurisdiction, or power. The outcome of a decision is often influenced by who makes it, and how it is made. The direction that energy resource development will take greatly depends which decision-making body is to be master, and in what circumstances.

One must first determine where the constitutional power has been bestowed. For analytical purposes one might consider the power structure in the United States in terms of vertical and horizontal dimensions. The vertical dimension refers to the various levels of government with successively smaller ranges of power: federal, regional, state, and local. The horizontal axis describes the branches of government that operate within each level: administrative (executive), legislative, judicial.

For instance, suppose an energy task force were to be formed, with the responsibility of determining the country's needs for energy, together with policies for environmental quality as well. Should the task force's power be focused on the federal or state level? Would it be more efficient on a national or local scale? Which perspectives are the most desirable? Is a state organization more likely to yield to local development pressures than a federal one? In the horizontal dimension, which branch of government should bear the responsibility for choosing the task force and establishing guidelines for its activities--the executive branch or the legislature? How will the policy outcome vary as a result of the decision-making procedures? These kinds of questions should be kept in mind during the following discussion.

B. Vertical Interaction

Two conceptual questions emerge: (1) what procedures are constitutionally required, and (2) what procedures would be the most appropriate in the absence of constitutional requirements? Of the four potential levels of decision-making, the balance between state and federal power is clearly of constitutional dimensions. Local and regional authority is created by the bestowal of power by the state and federal governments.

In many areas the federal and state governments have concurrent authority, where neither is prohibited from taking action by an enumerated constitutional directive. Under the Supremacy clause a federal law must be recognized over a state law in case of conflict. In some cases the federal government may restrict the state's authority where it would otherwise be constitutionally proper for the state to act.¹³ This federal exercise of authority in a situation of concurrent jurisdiction is called preemption.

A potential for preemption which may emerge is the relationship of federal coal surface mining laws to currently existing state laws. Senate Bill 425 would set minimum standards for the states to meet, but would permit any stronger state regulation to apply.

One important example of preemption is in the area of jurisdiction over nuclear power plants. Northern States Power Co. v. Minnesota held that the "federal government has exclusive authority under doctrine of preemption to regulate the construction and operation of nuclear power plants, including regulation of radioactive effluents discharged from the plants."¹⁴ In other words, Minnesota was held powerless in the face of the federal Atomic Energy Commission to control radioactive contamination within its state boundaries. However, states do have control over siting criteria, and may exert a determinative voice over plant construction, for example, through strict standards on thermal water pollution.¹⁵

The question remains: in what areas may preemptive powers be employed? (Note: for a comprehensive study of case law on this yet-unresolved point, see Plowshare Technology Assessment: Legal Studies.¹⁶) How far should the federal government be permitted to go in terms of environmental protection? Should it be able to have the last word in regulations, or is a state the more appropriate regulating authority? In terms of constitutional authority, the federal government has, without question, more power than the states. However, in some areas it might be more suitable for the states to make the decisions. (For a thorough examination of this question in which a federally dominated system is favored, see Electricity and the Environment.¹⁷) In the area of utility siting, one suggestion is that the state should have the last word if it is opposed to the development in question, and the federal government should have the final say if the state favors it.¹⁸ In other words, both the state and the federal government would have potential veto power over site selection.

Another question to be considered is under what circumstances should states form regional compacts? Could an interstate agreement be an effective means to direct action in a particular area, for instance, surface mining regulation, or should such a compact merely serve as a clearinghouse for research and ideas, as does the Western Interstate Nuclear Board. Such an organization may be limited to recommendation power only.

Lastly, how should local powers be integrated into the vertical scheme? In the case of a proposed nuclear blast to facilitate collection of natural gas, under jurisdiction of the AEC, should a county or municipality have any form of control or veto? One drawback could be a tendency to overuse the veto power. However, the same kind of veto action could be vital self-protection if the agency fails to recognize potential danger to the environment or the citizens in the area, or fails to respect local attitudes.

C. Horizontal Interaction

Choices along the horizontal dimension often depend on legislative and/or executive prerogative. In jurisdictional terms, either branch has the authority to decide questions on energy policy. Regulation of the development of energy resources can be controlled by legislation directly or placed within the power of an administrative agency. The latter has regu-

latory and enforcement powers, but such agencies are first brought into being by legislative action, hence their actions are indirectly controlled by the legislative branch.

Two primary issues are affected by the choice between the legislative and executive branches: (1) the role to be played by the judiciary, and (2) interactions between federal agencies and the states (as opposed to the relationship of federal and state legislatures).

(1) The role of the judiciary: scope of judicial review.

Judicial review is one method used to protect environmental needs which may have been ignored in the current system of decision-making. Unless or until there is public input into decision-making procedures, judicial challenge may be the most direct avenue open to those who disagree with a particular result. Judicial mechanisms of review are slow, but not as slow as the political machinery required to change laws or to replace people in power.

For each type of decision-making, legislative or administrative, there are two standards of judicial review. Review of legislative action consists of a determination of a statute's constitutionality, whether the enactment is within the legislature's constitutional jurisdiction. If there is a rational basis for constitutional authority, the action will be permitted to stand because the elected legislature is the proper body to make decisions in a democratic system. However, some policies enumerated in the Constitution are not subject to majoritarian rule--the "preferred" freedoms such as freedom of speech. In these cases the judiciary may scrutinize legislative activity more closely. Since there is no mention of environmental quality in the Constitution (in fact, emphasis on individual rights may work against environmental goals), it is unlikely that legislative regulation in this area would be subject to a higher standard of judicial review.

Review of administrative agency decisions consists of a determination of whether an action is within the agency's discretion as originally granted by the legislature, or whether the action is arbitrary or capricious so as to have no basis in law. The rationale for such a limited inquiry is that agencies are given discretion by the legislature to make political decisions in which the courts should have no part. However, if the original legislative act limits agency discretion by enumerating specific guidelines and options, a court may take a closer look at whether the procedures were properly adhered to.

Judicial review does not protect environmental interests per se. However, the specificity of a legislative mandate limits agency discretion and enables a court to assess agency decision-making more easily. Unambiguous guidelines would also encourage agency compliance in the first place, rendering judicial challenge less necessary.

Citizens to Preserve Overton Park, Inc. v. Volpe was a suit brought by a citizens' group to enjoin the Secretary of Transportation from

spending federal highway funds on an interstate expressway routed through Tennessee parkland.¹⁹ This case demonstrates how the specificity of a legislative mandate in establishing agency guidelines determines the standard of judicial review to be applied by the courts. If the Transportation Act had said nothing about parklands, there would have been no case--the routing decision would clearly have been within the power of the Department of Transportation. However, there were specific directives in the Act against the use of parkland unless "no feasible or prudent alternatives exist." Therefore, the court felt obliged to employ a higher standard of review to determine whether the legislative directives had been properly met. In this case it was decided that they had not been satisfactorily fulfilled.

Because of specifics within the Highway Act, legislative intent was presumed in this case to place a higher priority on parkland preservation than on economic factors. In the absence of such intent, the balancing procedure of decision-making would have sacrificed the parkland on the basis of financial considerations. This case demonstrates the important interrelationship of legislative specificity, agency decision-making, and judicial review.

- (2) Interaction between federal agencies and the states: the example of federal lands.

An issue that is very pertinent to the Rocky Mountain states is the control of public lands by federal administrative agencies. In many states, control over land use could, jurisdictionally, be regulated by state land use legislation. Almost 50% of the total land area of the eight Rocky Mountain states is in the federal domain; in several states (Idaho, Nevada, Utah) well over half of the land area is federally owned. The state's jurisdiction over activity on these lands appears to be limited to the protection of the health, safety and welfare of its people. What is included under such protection, and is there any further control the state may exert? This issue is particularly relevant with regard to energy development, as substantial quantities of coal, oil shale, uranium, oil, and natural gas are found on federal land. Most are developed under lease by private companies. Thus far, leases have not required stringent environmental protection.

If a state (or its citizens) wishes to exert some degree of control over development on federal lands within its boundaries, one approach would be to apply pressure to compel federal agencies to comply with state laws.²⁰ An illustration of this kind of bargaining is seen in a contract currently being negotiated between El Paso Natural Gas Company and the Secretary of the Interior for water rights on Indian reservation land in New Mexico. El Paso Natural Gas wants the water for surface mining and gasification of coal. The New Mexico Stream Commission (a state agency) is recommending that the contract expressly say that state laws will be applicable to the parties and their activities. The motivation behind this is that New Mexico has surface mining regulations which do not necessarily apply to operations on federal land. (The situation is further complicated by the rights the Navajo Indians wish to assert on their own behalf.)

There are two factors in the New Mexico situation that enable a state agency to apply pressure for such a contract clause: (1) water is ultimately a public resource belonging to the people of New Mexico, and (2) the contract with the federal Department of the Interior must be approved by Congress. According to Paul Bloom of the New Mexico State Engineer's Legal Department, if the recommended clause is not included in the contract, New Mexico legislators will lobby in Congress to have the contract rejected. The request of the state agency is thus likely to be respected.²¹

Unfortunately for environmental concerns in other areas, application of the New Mexico strategy may not be widespread because of the uniqueness of the situation. The author speculated about a similar approach to the Rio Blanco blasts in Colorado this past spring, where a private company and the AEC contracted to experiment with nuclear stimulation of natural gas formations under federal lands. However, it appears that the two cases are not parallel, because the AEC has wide discretionary powers over its own activities. There is no requirement for Congressional approval, and natural gas is a privately owned resource, unlike the water in New Mexico. (There might have been a test of power between the state and the federal agency had Governor Love not approved the blasts. However, under the Northern Power Co. v. Minnesota case, it probably would not have made any difference. A citizen suit challenged the blast under the state law prohibiting radiation pollution of ground water, but was not successful in delaying or stopping the blast.)

Many people concerned about environmental quality object to the power of the AEC and other agencies to regulate their own activities with no provisions for public input or review. The Environmental Protection Agency recently agreed to allow the AEC to monitor its own Rocky Flats plutonium plant near Golden, Colorado. In this kind of situation there are neither procedures for double checking plans, nor public access to the AEC's monitoring data.

D. Composition of Decision-Making Bodies

Once choices are made along both the vertical and horizontal dimensions of power, questions about the actual composition of decision-making groups remain. Who should the people be, and how can they be chosen to achieve objectivity and competence and to avoid conflicts of interest that currently erode the credibility of many such groups. For example, last spring the Senate balked at a presidential nomination for the fifth position on the Federal Power Commission. The existing four members each had previous connections with oil and utility companies either as counsel or executives--so did the nominee. Many were skeptical that someone whose expertise is derived from industry-related experience could adequately make decisions about energy resource development giving fair consideration to environmental and other public interest needs.

On the other hand it may sometimes be difficult to locate expertise that has been gained without such a conflict of interest. One viewpoint suggests that federal aid aimed at improving state research and evaluative capacities be directed to state universities to boost their ability to render indepen-

dent judgments."²² This approach might be applied in other areas of energy decision-making as well. It might also be noted that citizen and environmental organizations are developing their own experts by necessity. Out of fairness, many interests and perspectives should be represented on decision-making bodies. This goal would certainly indicate the need for diversity if objectivity is indeed sought.

It is difficult to legislate requirements for diversity in decision-making bodies that will result in objectivity. However, the legislation that controls composition of such bodies should be as specific as possible so that a higher standard of judicial review (under Overton Park case) can be used to examine questionable appointments. The approach of some states in creating an energy or environmental task force has been to include representatives from state agencies (air and water pollution control, natural resources, etc.), public interest groups, local governments, and industry. Wyoming compromised and eliminated both industry and environmental groups from its Environmental Quality Council. Perhaps public approval by way of hearings could be incorporated into the appointment procedure.

If faith in the decision-making processes is to be restored, there must be efforts to eliminate real as well as apparent conflicts of interest. The success of current federal plans for voluntary cutbacks in energy use hinges on the public's faith in the administration's sincerity.

E. Summary

Questions of jurisdiction are a complex and intriguing aspect of the role of legislation in dealing with energy issues. However, since energy development problems are so urgently in need of response, jurisdictional questions need early resolution. Perhaps the question of "which is to be master" could be modified to "which is to be initiator." Thus far, the federal government has taken the lead in some areas: air and water control, creation of NEPA (the National Environmental Protection Agency), and authorization of funds to be used for development of mass transit systems.

However, there are glaring examples of energy problems on which no conclusive action has yet been taken by the federal government: surface mining regulations, land use controls, public policy on energy development and use. In these areas, states are assuming a relatively responsive role, probably because the damaging consequences of development are felt sooner on a local level. Montana has come the closest to developing a comprehensive policy toward the use of energy resources in the Rocky Mountain region (and perhaps in the country) by regulating mining and location of energy conversion facilities, studying socio-economic impacts of energy development (chiefly coal in Montana) and natural resource research needs, and formulating policies on energy and land use.

Environmental problems that are regional or local in nature are often slow to be recognized on the federal level. It is therefore appropriate that states take the initiative to protect their valued and unique features (coastal shorelines, lake regions, mountains), existing economies, and way of life. There is much more that can be accomplished to prevent environmental degradation before the limits of state constitutional jurisdiction are reached.

V. POLICY FORMATION

When approaching the multitude of issues surrounding the energy topic, it is crucial that comprehensive policies be articulated at all levels of government. In the absence of an overriding policy structure these complex issues will only be addressed in piecemeal fashion. While the focus herein will be the generation of policy by legislative bodies, it is important to note that basic policies must be carried through to administrative branches of government as well as to the public.

Policy formation must be broken into three distinct areas: development of conventional energy resources; patterns of demand and consumption; and research on and development of alternative sources of energy.

A. Development of Conventional Energy Resources

In the past there has been virtually no policy guidance of the extraction of natural resources. The existence of resources that could be economically extracted and an interested industry provided sufficient reason to develop. Today, however, there is a growing awareness that further factors must be taken into consideration in the development of our resources. The state of Montana has a surface mining law, for example, which goes so far as to prohibit coal surface mining on lands that possess certain unique characteristics. This type of legislation introduces new factors into the resource development area which allow such development to be placed in relative perspective with other values or policies that the state might hold. Specifically in the case of Montana, questions dealing with environmental loss and damage, reclamation potential, and the economic and energy return of the recovery process all have a place in the decision-making process.

Future development of the vast oil shale reserves in Colorado, Utah and Wyoming will pose complex questions as to whether the energy return will be worth the anticipated environmental and social costs. In the absence of environmental and social policies and standards, this balancing question might never be asked.

In dealing with the development of present energy resources, then, Congress as well as the various state legislatures must establish policies and standards in the environmental and social areas. These policies should address the question of reclamation, especially in the Rocky Mountain states in which the viability of the agricultural industry will greatly depend upon the manner in which lands disturbed by mining are left. States might also generate policy and standards dealing with the quality of water and air. These standards become of high importance, for example, with regard to the impact of oil shale development upon the salinity of the Colorado River.

In dealing with the development of present energy resources, it is important to have legislative evaluation of competing land uses. Many uses are mutually exclusive, such as strip mining, agriculture, transportation routes, and wildlife habitats. Prior to development of energy reserves, then, it is crucial that a state establish a comprehensive set of land use plans and regulations. It would be possible through such planning to establish a priority of development in cases of competing uses.

In the absence of a straightforward policy of priority, the states can build in a preference for certain uses through a taxation system. In Oregon, for example, the state legislature decided to encourage farming and therefore permitted a low tax rate for agricultural lands. Should a farmer in Oregon decide to sell his land for a use other than an agricultural one, he must pay a "roll back" tax for the past ten-year period, at a much higher rate (for the proposed non-agricultural land use). However, in practice, the Oregon law has not succeeded in its intent to encourage farmland activity; the power to grant the lower tax rate was given to County Commission Boards, and thus far a preference has been shown for incoming development which raises the level of tax revenue over the preservation of farm production. An automatic tax rate assessment would be needed to achieve the statute's intent. Such a tax structure law could be effectively integrated into comprehensive land use planning.

Another need in the area of policy formation dealing with our energy resources is the ability of the public to participate in the decision-making process. A formal structure is needed at all levels of government whereby industrial, environmental, and general citizen input can come to bear upon the formation of policies, standards, and regulations dealing with energy production. Such public participation will not only assist in the development of laws which will have widespread support, but is also in the best interest of industry. If citizens are given a responsible role in determining the future of their communities, the option of long-drawn-out court battles might become actions of only last resort.

A significant deficiency in the existing process is the absence of a clear means of choosing alternative sites and locations for energy development activities. Coal and oil shale are situated as a result of natural processes, as are rivers, airsheds, ground water, and ecosystems. The sum of conditions varies from one energy source location to another. There is no clear way at present of determining that the total social costs and benefits of one tract are such that it should be developed before another, or of controlling which tract is developed (or at what rate) when different end uses of energy, and different end use "demands," are involved.

A permit system, coupled with sound planning and demand analysis, should be able to address this problem, although further research on this matter is needed, it appears.

In the same manner in which the various state legislatures can structure policy to facilitate public participation, lawmakers should be sensitive to the fact that it will be the administrative branch of government which will implement certain policies and develop standards. In this vein it is important that legislative directives be as explicit as possible, not only for the obvious reason of clarity, but more importantly to establish a firm legal base for such policy decisions. The legislature should also be sensitive to the manner in which the burden of proof is developed in law. Many states are now looking to the proponent of an action to "prove" that the proposed development will not constitute a danger to the public welfare. In delegating authority to the administrative branch, the legislature should also address possible conflicts of interest in the administration of energy-related laws. Boards, commissions, and other legally defined entities should not be solely composed of the interests that they are regulating.

A final area of consideration when dealing with the question of the development of present energy resources has to do with the exportation of energy from various states. Specifically in the Rocky Mountain states, where electricity is in increasing proportion produced near isolated fuel sources and then transmitted to urban centers, the benefits seem to accrue to the purchaser of the power and the environmental degradation occurs in the region which produces it. As previously discussed, the state is a more appropriate decision-making level to decide an energy facility site than a local administration. However, exportation of energy and importation of pollution dramatizes the fact that the energy issue is spread beyond a statewide scale.

The Four Corners generating complex and other plants in the Southwest which provide Los Angeles with some of its energy are good cases in point. What weight should be given to L.A.'s consumptive capacity as compared to the reclamation problems from coal surface mining, air pollution from coal-fired plants, large land and water allocations, socioeconomic problems, and unaesthetic transmission facilities that face the Southwestern states?

These questions which arise in the exportation issue have spawned a new parochialism among Western states. The Utah Democratic party two years ago took a position calling for a moratorium on production of electricity and a shift to the exportation of coal instead of electrical generation elsewhere. The state of Montana has taken steps to address the exportation issue. One goal of the Montana Energy Study is "to ensure that the State's paramount concern with the quality of her human and natural environment is not subordinated to a national policy which may essentially disregard those values in its concentration on quantity of energy production."²³ This attitude has also been expressed by Governor Judge of Montana, both at Congressional hearings and in a letter to the Bonneville Power Authority, refusing to waive the two-year waiting period prior to plant construction under the Utility Siting Act of 1973.²⁴ (See Appendix.)

Parallel action among the individual states is needed to most effectively protect the environments of the Rocky Mountain region. Should Montana remain isolated in its position on exportation and energy resource development, environmental degradation would become more extensive in neighboring states. Therefore a regional policy which favors environmental protection can only be achieved through efforts to integrate legislative standards among the member states.

B. Patterns of Demand and Consumption

Planning the method of delivering energy to the public without analyzing energy demand presents an unbalanced view of the energy situation. What, then, is energy demand; how is it to be defined? A study prepared for the U.S. House of Representatives Committee on Interior and Insular Affairs found current demand studies to be woefully inadequate because important terms were not defined.²⁵ Is "demand" the amount of energy we use, an extrapolation based on past growth curves, or the amount of energy we need?

Demand is difficult to measure because until now we have considered energy to be in unlimited supply. Now, in times of energy shortage, our frame of reference must be modified. We need to create a methodology to determine the magnitude of energy requirements in the context of "controlled" con-

sumption. Only then can we determine the amount of energy we need to produce for the American people.

Decisions about energy demand are closely related to values and lifestyles, a subject not directly targeted by legislative bodies. It is important, however, for decision-making entities to consider legislation which will have a secondary effect upon energy consumption. The first area of need is simply information. The public must be provided with information concerning gasoline efficiency, engine demands, energy demands of household appliances, and comparative costs and efficiencies among various heating fuels. (Page 34 contains information about a Minnesota proposal with regard to regulations in this area.)

All levels of government can address building codes with the conservation of energy in mind. The choice of construction material and design will have a great bearing upon energy demands, especially in the areas of heating, cooling, and illumination.

Another method of affecting the demand for energy is a modification in tax structures. Proposals are being discussed in a number of states which would tax larger cars, for example, at a higher rate than the small economy models. A change in utility rate structures is also suggested as a method of regulating demand.²⁶ Higher costs curb individual consumption and also result in incentives to industry to develop lower energy consumption techniques in production.

In urbanization and land use, the present sprawling, leapfrogging configuration militates against the use of energy-saving transit and practically demands high-consumption, auto-oriented transportation.

In the final analysis the most important factor of energy consumption is individual attitudes and values which cannot simply be dictated by legislation. In this light all levels of government have a responsibility to influence public attitudes through their actions. A citizen will be more responsive to a rationing program if government officials initiate a program of their own, using smaller cars and driving more slowly, for example. Changing public attitudes requires a coordinated approach through the education system, and there again, a governmental role can be seen in the funding and initiation of such educational programs to give the public the information necessary to change their lifestyles.

C. Research on and Development of Alternative Sources of Energy

The present energy resources which we depend upon are in finite supply, many uses are nonsubstitutable (such as the need for chemicals), and environmental restrictions are being tightened. These factors add up to a very short "lifespan" for the energy resources of today. It is critical that we increase the financial support of research on alternative energy sources.

In addition to financing exploration of alternative fuel sources, it is equally important to investigate new technologies which are aimed at the consumption end of the spectrum. New transit systems must be developed, for example, which will result in easing the pressure for automotive fuels

as well as reduce air pollution.

There should also be concentration on renewable energy sources, such as solar and geothermal energy, as well as the conversion and use of community wastes. Nuclear energy sources need to be more thoroughly explored, and legislative standards and controls over innovative techniques must be established. A major goal in energy development should be diversity to avoid reliance on only one or two systems which might be subject to disruption.

Needless to say, the cost of research and development of alternative sources and technological methods of easing consumption will be great. The federal government will be expected to bear the brunt of such research and development activities, although this should not prohibit or discourage various states from also engaging in such exploration. Idaho is working in the area of geothermal energy sources, and New Mexico and Arizona are conducting solar energy projects.

At the present time the federal commitment in R & D of alternative energy sources contains a heavy bias toward nuclear power and "advanced" fossil fuel technologies such as coal gasification. With half a dozen possible alternative sources of energy production, the need for public policy has never been more important. Even with an increased commitment from the federal government for R & D, there will still be a limited amount of funding to go around. A well-thought-out policy structure, born of full participation, will be necessary to ensure that alternative sources which are developed are realistic with regard to our energy demands, return an acceptable degree of energy for the cost, and importantly are acceptable in light of other community concerns.

VI. CONCLUSION

The eight states of the Rocky Mountain region are presently faced with urgent demands relating to energy resources. Because of the coal, oil shale, natural gas, and uranium found in the region, these states will be the target for intense development pressure in an effort to combat the energy "crisis." It is feared by many people in the region that prevention of environmental degradation in this region may be of less importance to the nation than the swift production of energy; hence, it may be incumbent upon the individual states to enact policies and standards to protect the unique mountain, arid and semi-arid ecosystems from destruction, as well as to provide proper safeguards to see that the integrity of the indigenous communities is not disrupted.

To this point, the Rocky Mountain state legislatures in general have not risen to meet the challenge before them. Montana has set an example for other states by initiating studies and policies to deal with energy production and enacting stringent controls over surface mining and utility siting. Some states outside the Rocky Mountain region have progressed further with legislation in the areas of land use and energy conservation.

Undoubtedly, many state leaders feel that they have no control over federal projects, and therefore are reluctant to act in the area of energy production. It is certain that the states are limited in their "control" over the energy situation; however, their influence has not been tested to a conclusive degree, and therefore it can be assumed that states might have the chance of determining their futures. This could run along a continuum from persuasion to actual standard setting. The Rio Blanco suit is a case in point, where the judge concluded that the state of Colorado had some jurisdiction in the matter.

At the very least, individual states can apply a severance tax to the resources that are being exploited and shipped out of their boundaries, thereby establishing a source of revenue to protect certain community goals.

At the present time it is the citizen environmental groups that continue to bear most of the burden for environmental safeguarding. The states are not providing for a systematized method of public participation in permit hearings, and therefore such groups must in many cases resort to costly litigation in order to inject environmental concerns into development decisions. This role of watch-guarding the public interest with regard to environmental protection should be a role of government, guided by policy and enforced by regulation.

The fact that national energy demands are already pressing makes it necessary for the Rocky Mountain states to immediately move toward establishing mechanisms to protect the environment. It is the conclusion of this author that there exist many opportunities for the states to exert influence and authority in setting policies and regulations in the areas of energy production and consumption, as well as encouraging research and development of alternative sources of energy. As of this report, the Rocky Mountain states have generally not taken advantage of these opportunities.

VII. RECOMMENDATIONS

The main body of this report discusses energy resources in the Rocky Mountain region, the environmental complications involved in their development, and state legislative decisions that have (or have not) been made in response to the "energy crisis." The following section is comprised of recommendations for both policy positions and legislative activities in keeping with an overall goal of environmental quality in the Rocky Mountain states. As in Section V, the recommendations are catalogued in terms of development of present energy resources, patterns of demand and consumption, and research on and development of alternative sources of energy. A fourth category is included on issues of state jurisdiction over energy concerns.

A. Development of Conventional Energy Resources

Policies on the energy resources we currently use are vital as long as development pressures exist, or until such time as we are able to rely on alternative sources. The initial need is for information. We have thus far made development decisions largely in the private sector on the basis of short-term economic factors, and now need to thoroughly examine the potential long-range environmental and social effects of development, which may be economic as well. The first step should be to establish study commissions with a specific mandate to examine all energy resources, to compare them with respect to efficiencies, economics, and environmental protection needs, and explore ways to coordinate their uses. Also, questions of need and demand must be thoroughly probed, with emphasis on energy conservation.

In terms of continued development of energy resources, there is a need for statewide land use planning, supplemented by standards and regulations for each type of development. Legislation in specific areas must be enacted before development occurs, otherwise the regulations do not apply, and uncontrolled environmental damage will result.

Land Use

Statewide land use laws are the most effective mechanism for insuring environmental quality. There needs to be a legislative determination of priorities among competing land uses within each state. For instance, Colorado's agricultural lands need protection against encroachment by creeping residential and other development. A low tax rate on farmlands would be one answer. All the mountain states have public lands (both federal and state) that satisfy wilderness and recreation needs for the nation as a whole. Tourism is a major element of the Rocky Mountain states' economies; preservation of recreational areas or establishment of mining and other energy-related uses must be placed in a system of priorities. State policies may filter down to local decision-making levels by way of permit and license regulations, for example.

It is in a state's interest to enact comprehensive land use laws in the near future. Federal legislation may preempt the state's right to establish planning mechanisms and land use priorities. Perhaps a system could be developed whereby states would have the option to develop individual land use plans within a designated time period, after which time the planning power would revert to the federal government.

Water

The existing state laws are inadequate to prevent adverse environmental impacts of water resource development. A number of changes are needed. First, states should give in-stream water for environmental purposes equal priority as a beneficial use with agriculture, municipal and industrial water. Constitutional amendments may be required to do this. Second, states should recapture the public ownership and control of water which has been abdicated. The appropriation system has permitted water rights to become tantamount to fee simple ownership, rather than conditional permitted uses of public property. Third, there should be complete environmental impact statements used in decision-making in water appropriations. Fourth, alternatives to the simple engineering approaches of diversions (usually involving gravity flow) must be examined. These could include trades of water, more efficient use of water, and other methods to ensure that the appropriation and diversion finally selected is the best possible alternative.

Last, states do not, in general, have adequate information on appropriated water versus available water. There is frequent discussion that "it is thought that a river is overappropriated," but this can seldom be proved or disproved. In terms of water rights, a river is overappropriated when water is not available to someone who has a right to use it. In biological terms, a river is overappropriated when, if all users put a call on for water, the remaining flow is significantly damaging to aquatic life. This can and does occur, especially during drought periods as occurred in Idaho and Montana in 1973. Some rivers were completely dried up; return to biological productivity may take many decades.

Surface Mining

Surface mining needs stringent regulation because of the potential environmental degradation involved. A tight surface mining statute should (a) list specific and extensive environmental factors to be considered in permit decisions; (b) define reclamation in terms of ecological results, not in terms of a time period after which an operator's responsibility ceases; (c) require the applicant to bear the burden of showing that reclamation can be satisfactorily achieved; (d) develop a forum and procedures for early public participation and review of the decision-making process; and (e) establish procedures to avoid conflict of interest in positions of power; (f) urge industry to innovate techniques with reduced environmental damage, prove acceptability before trying on any large scale.

Energy Conversion Facility Siting

A major need in siting legislation is regulation of all varieties of energy facilities and related construction. In terms of environmental considerations the requirements listed (a)-(f) under Surface Mining should be duplicated. Efforts should be made to control nuclear facilities (under the general jurisdiction of the AEC) through state thermal pollution regulations, as well as through site location procedures.

Permit fees accompanying applications should be large enough to enable state permit boards to conduct extensive independent assessments of appropriate

sites. One weakness in Montana's otherwise comprehensive siting law is that only industry-proposed sites may be evaluated. The board should have the power to approve the most appropriate site within the state, unbound by industry preference. Policy should be set on the issue of energy exportation (see "Policy Formulation," Section A), and sites should be approved or rejected accordingly.

Finally, long-term planning is vital. There must be continuous reevaluation of actual need for new facilities, well-publicized planning for those facilities to be constructed, and insistence on maximum environmental protection and safety.

Oil Shale

Thus far there is no legislation regulating the potential oil shale industry. Standards must be established before oil shale development begins, since legislation may not be applied retroactively. Some oil shale will be recovered by surface mining techniques, which should be regulated by more general surface mining laws. Other techniques of deep mining and underground processing will require separate legislative guidelines.

Of great importance not only with respect to oil shale development, but also with any rapidly industrializing rural area, is the need for all levels of government to cope with the socioeconomic impacts of such development. Assuring that revenues are sufficient and that they are directed in a timely fashion to the communities most needing them are matters of direct concern to the states. Planning assistance can also be provided.

Nuclear Energy

Regulation of nuclear energy developments is integrally related to the jurisdictional struggle between federal agencies (the AEC in particular) and the states. The extent of state power with respect to the AEC has been tested in Minnesota, but should be tested further in the Rocky Mountain states. Legislatures should establish standards to protect their citizens against radioactive pollution of water, ground, and air. There should be a demand for the burden of proof for the safety of new technologies to be placed on the AEC and cooperating industries. Protests should be made against the system of self-regulation enjoyed by the AEC. There should be a demand made for public access to proposed nuclear power plant planning and monitoring data.

B. Patterns of Demand and Consumption

In view of energy shortages, policy determinations must account for "controlled" consumption, as opposed to unlimited consumption of the past. Mechanisms must be designed to measure the energy requirements of the American system in order to determine real energy needs.

Efforts are being made to conserve energy by modifying certain types of activity: slower speed limits, smaller gas purchases, reduction in lighting and advertising, efforts to reduce waste of energy in everyday living. However, all of these measures are instantaneously reversible--everyone can speed up, buy full tanks of gas, turn on lights, and revert to more wasteful habits in energy use.

Conservation of energy needs to be built into our way of life since energy is likely to continue to be in short supply for a long time to come. The key to effective energy conservation is a system where efficient and low energy consumption is automatic. For instance, emphasis on and perhaps availability of the private automobile must be reduced in relation to development of mass transit systems. Then the amount of energy required for transportation could be reduced, predicted and controlled. Building codes need to be revised so that regulations over design, materials, insulation, heating, cooling, and lighting result in lessened and determinable energy requirements (per unit area).

Interim methods to insure reductions in energy use include the establishment of priorities for fuel use in times of extreme shortage, the prohibition of promotional advertising by energy companies, a requirement for energy-related information on product labels in order to exert market pressure on non-efficient or high energy-use products, and taxation on the same. Incentives are needed to encourage industry to initiate production techniques requiring less energy, rather than laying off workers as production itself is reduced. In addition, public policy must incorporate examples of conservation and efficiency. Government leaders in the public eye can encourage reduction of wasteful activities by doing so themselves.

Finally, the price of energy must begin to reflect its true cost. The primary step would be for industry to internalize the costs of energy development with the elimination of depletion allowances and tax breaks. Severance taxes on nonrenewable energy sources should be increased in order to brake demand as the amount of recoverable resources diminish, taking into account resources not available because of potential environmental damage. Utility rates for the public should be changed to reflect actual use to provide monetary incentives for conservation. Energy costs should get progressively higher as the volume of energy consumption increases.

C. Research on and Development of Alternative Sources of Energy

The need for increased research funding is obvious. Alternative energy sources must be developed to substitute for environmentally harmful energy development and depletion of finite resources. Innovations are also needed in the areas of energy use--transportation and production methods, for instance.

Research and development is a costly necessity. Policy must determine the areas deserving top research priority in order to allocate the available funds in the most effective manner. For instance, further development of the coal gasification process is probably less advantageous than exploration of solar energy potential, because diminishing coal supplies and the environmental degradation due to surface mining are limiting factors of the former, whereas sunlight is in limitless supply. Other areas deserving emphasis are recycling and use of community wastes for energy. This would both reduce pollution potential and help communities to provide some of their own energy locally.

The high cost of R & D necessitates federal leadership. However, states should provide additional support wherever possible, specifically for energy alternatives of high local potential. The southwestern states have

a great interest in solar energy, for example. If such regional possibilities are not recognized by the federal government, the states should proceed independently. Also, financial incentives to promote innovative energy schemes and use of new energy technology in state activities should be established.

The Rocky Mountain states must encourage the choice of environmentally sound research priorities on the federal policy-making level. Otherwise the environmental quality of these states will be severely threatened should the region become the nation's energy colony.

D. State and Federal Jurisdiction over Energy Issues

There are many areas in which state legislatures can take action to protect environmental quality. To date, so little has been initiated on the state level that a worry of encroachment on federal jurisdiction is needless.

Suggested goals for state and federal interaction and cooperation on energy-related matters follow:

- (1) Federal laws for environmental protection should always allow states to enact more stringent regulations in areas such as surface mining, utility siting, air and water quality control, and land use planning procedures. In other words, the federal government should not preempt state regulatory powers but should use its national control to establish minimum standards.
- (2) States should pressure the federal government to allow whichever is the stronger of state or federal regulations to apply to public lands. In the absence of federal law, a state should be permitted to enforce its statutory requirements over activities on federal lands within its boundaries.
- (3) States and citizen groups should continue to protest self-regulation by federal agencies and insist on public access to and review of plans. States should use their potential power for environmental protection by exerting influence over federal agencies where possible and appropriate. For example, a state could check the AEC through water pollution standards and siting criteria.
- (4) State and federal legislatures must set specific procedures, guidelines, and environmental standards for administrative agencies to preserve a higher standard of judicial review of agency decisions.
- (5) A system of federal/state and state/local vetoes is needed for decision-making over controversial developments such as energy conversion facilities or mining operations. Such a mechanism would require approval of a project by each level of government.
- (6) Action to protect environmental quality and to confront energy problems is needed from both the legislative and executive branches of government. There is much room for initiative by both before distinctions need be made between the two.

- (7) Legislative regulation, executive discretion, and public pressure is needed to prevent conflicts of interest in those given power in decision-making bodies, such as commissions, agencies, and permit boards. Broader representation is also needed.
- (8) Environmental impact statements are required for major federal projects and some state ones. These are most often provided by the parties who will undertake the development in question. State and private universities should be utilized as a source of disinterested expertise to evaluate potential environmental degradation.
- (9) States should also adopt the requirement of environmental impact statements for projects under state jurisdiction.
- (10) State legislatures should recognize the importance of citizen action and public interest in decision-making processes. Public participation in planning procedures should be established, and legal standing to challenge decisions should be granted.
- (11) In general, states should assume an active role to protect their unique ecological and socioeconomic features until checked by federal action. On the other hand, the federal government should not hesitate to establish environmental regulations in areas where states may be slow to take action.
- (12) In particular, the Rocky Mountain states must be aware of the need to establish a strong regional environmental posture by parallel legislative action among the states in order to control and respond to growing national pressures for increased energy production.

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State of Montana
Office of The Governor
Helena 59601

4/18/73



THOMAS L. JUDGE
GOVERNOR

May 11, 1973

Mr. Donald P. Hodel
Bonnerville Power Administration
Box 3621
Portland, Oregon 97208

Dear Mr. Hodel:

I appreciated the opportunity to meet with you and officials from several electric utilities on Friday to discuss the relationship between power demands in the Pacific Northwest and the utilities' plans for construction of energy conversion plants in Montana. The discussion was extremely valuable to myself and state agency representatives, and I am hopeful it has set a precedent for the open exchange of information which is absolutely essential to ensure decisions in the best interests of Montana.

I understand the utilities' objective is to obtain from the state an expression of opinion as to the possibility of a waiver of the provision in the Montana Utility Siting Act requiring an application for a certificate two years prior to the anticipated commencement of construction of a utility facility as defined in Section 3(3)(a).

The following comments, I believe, are relevant.

First, the magnitude of development anticipated by the construction of two 700 megawatt thermal generating units and associated transmission lines is unprecedented in Montana's history. Capital investment will be approximately \$500 million. The construction phase will require 1,600 people; the operational phase 260; and the population of the area can be expected to increase by over 6,000 people within a short period of time.

The possible long-term economic, social and environmental impacts are also unprecedented and require much more than a cursory evaluation. As Governor, I have the responsibility of being certain that the various impacts are thoroughly analyzed, understood, and evaluated in light of the best interests of Montana. Premature judgments based on inadequate information would violate this responsibility.

Second with passage of the Utility Siting Act by the 43rd Legislature, we have entered a new era of public involvement

Mr. Donald P. Hodel
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May 11, 1973

in decisions on resource management. I have advocated this involvement and will continue to do so, for the time has passed when government or industry alone can make decisions affecting the lives of many people. No one can deny that problems are likely to arise while this concept is brought to realization, for adjustments in the policies and practices of industry, government, and the public will be necessitated. We can reasonably anticipate delays of uncertain duration.

I have the responsibility to ensure, and the Act requires, that the public have an opportunity to review and influence the impact analysis and decisions.

In view of these considerations, and upon the advice of the Department of Natural Resources and Conservation and other appropriate State agencies, we cannot make a firm commitment on a definite time schedule for completing the necessary evaluations. Nor, in compliance with a policy agreed upon on May 4, 1973, is the Board of Natural Resources and Conservation prepared to consider a time waiver until an analysis and recommendation consistent with the law has been prepared by the Department.

However, at the same time, I cannot ignore the significance of the proposed development to Montana and the state seriousness of energy problems in the Pacific Northwest. Montanans are very much aware that we are an integral part of a nation and a region, and we do not want to witness the unnecessary closure of schools, hospitals or industries--if indeed that prospect is before us.

Therefore, when an application is filed, I am prepared to request that all state agencies assign the highest priority to completing the necessary evaluations as expeditiously as possible. Five conditions are attached to the establishment of this priority:

1. The need for expediting the evaluation shall be subordinate to the need for a study which is as thorough and comprehensive as required by the letter and intent of the law.

2. As soon as possible after the filing of an application, the Department of Natural Resources and Conservation will initiate an in-depth study to determine the validity of the statement of critical need upon which the difficult time schedule is based. If at any time the statement is proven incorrect, the priority status of the evaluation will be immediately removed.

3. Assignment of the highest priority neither assures completion by a specified date nor indicates a favorable pre-disposition toward the proposed project.

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4. Public participation in accordance with the letter and intent of the law will be guaranteed.

5. Options as to the approximate locations of the proposed plants remain open to the state in the event that dispersal of thermal electric generating facilities is found desirable.

After consideration of all environmental factors and substantiation of the assertion of critical need, and upon Departmental recommendation that approval of a certificate would be compatible with our environment, our public need, and the quality of life in Montana, the request for a time waiver should then be considered by the Board.

If the Board of Natural Resources and Conservation then approves the certificate and allows the time waiver, and assuming the Department of Health and Environmental Sciences certifies that air and water quality standards will be met, I will request that the Board seek assurances that the energy produced be used to alleviate shortages of power that might otherwise engender unemployment of Montanans. As you suggested, on Friday, this may involve reservations of power for Montana's uses.

In short, I believe the State of Montana is willing to make a good faith effort to help solve a real energy crisis. However, we must insist that the same good faith be extended our state as we seek to preserve the values which give meaning to our concept of Montana.

Beyond the immediate consideration of the two 700 megawatt plants, I believe it appropriate to state a number of concerns I have regarding the national energy crisis.

If the crisis is as serious in this country as indicated by the statements used to justify rapid development in Montana, then the National Administration has shown an appalling lack of leadership, and a complete change in approach is required.

First, as President Nixon did not do in his energy message, we must honestly recognize and inform the public of this nation's inability to fulfill the continually growing demands for energy unless we are prepared to absorb monumental environmental and economic costs, even if this admission results in adverse political consequences.

Once this is done, a program to reduce demand and maximize the use of existing resources should be developed and immediately implemented at the national level. Included in such a program could be:

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1. A national energy conservation tax which would discourage the purchase of goods that are highly energy consumptive.
2. A far greater amount of research funds to find more efficient and less environmentally degrading ways of utilizing energy. A fifty per cent increase of a grossly inadequate base does not represent the rearrangement of priorities that is needed.
3. Financial support for programs designed to determine the consequences of energy development. In our region the Northern Great Plains Resources Program has not been provided the resources so obviously necessary to accomplish the stated objectives.
4. The commitment of federal funds to maximize the capacity of existing energy facilities. In our area the lack of such funds has, by BPA's own admission, "resulted in significant delay in the schedule of generation installations at Federal hydro projects." Failures to proceed with the reregulating reservoir and additional generating units at Libby Dam are prime examples.

At the regional level, BPA and the utilities could exercise far more leadership by:

1. Funding an educational program in an attempt to reduce the growth in demand by increasing public awareness of the relationship between the environmental costs of production and the consumption of electricity.
2. Adopting more realistic assumptions for planning, as advocated by the Northwest Public Power Association, and extending the lead time for planning to that used by utilities in other parts of the nation.
3. Using environmental analyses to more honestly evaluate alternatives rather than simply to justify decisions already made.

In summary, it appears to me that everyone expresses concern about the energy crisis, but few are willing to make the commitments and take the actions necessary to guide our nation through the difficult years ahead.

I am hopeful this rather lengthy letter clarifies what I believe is the best position Montana can assume.

Sincerely,

THOMAS L. JUDGE
Governor

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CHAPTER NO. 325
MONTANA SESSION LAWS 1973
SENATE BILL NO. 94

AN ACT CREATING "THE MONTANA STRIP MINING AND RECLAMATION ACT" AND PROVIDING FOR THE CONTROL OF PROSPECTING FOR AND THE STRIP MINING OF COAL, CLAY, PHOSPHATE ROCK, AND URANIUM; PROVIDING FOR PERMITS, RECLAMATION PLAN REQUIREMENTS, METHODS OF OPERATION, AND PENALTIES; PROVIDING FOR THE TERMINATION OF RECLAMATION CONTRACTS ENTERED INTO UNDER CHAPTER 245, LAWS OF MONTANA, 1967; REPEALING SECTIONS 50-1018 THROUGH 50-1033, R.C.M. 1947; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. This act shall be known and may be cited as "The Montana Strip Mining and Reclamation Act."

Section 2. It being the declared policy of this state and its people

--to maintain and improve the state's clean and healthful environment for present and future generations,

--to protect its environmental life-support system from degradation,

--to prevent unreasonable degradation of its natural resources,

--to restore, enhance, and preserve its scenic, historic, archeologic, scientific, cultural, and recreational sites,

--to demand effective reclamation of all lands disturbed by the taking of natural resources, and

--to require the legislature to provide for proper administration and enforcement, create adequate remedies, and set effective requirements and standards (especially as to reclamation of disturbed lands) in order to achieve the aforementioned objectives,

the legislature hereby finds and declares:

(1) That, in order to achieve the aforementioned policy objectives, promote the health and welfare of the people, control erosion and pollution, protect domestic stock and wildlife,

preserve agricultural and recreational productivity, save cultural, historic, and aesthetic values, and assure a long-range dependable tax base, it is reasonably necessary to require, after the effective date of this act, that all strip mining operations be limited to those for which annual permits are granted, that no permit be issued until the operator presents a comprehensive plan for surface reclamation and restoration, together with an adequate performance bond, and the plan is approved, that certain other things must be done, that certain remedies are available, and that certain lands because of their unique or unusual characteristics may not be strip mined under any circumstances, all as more particularly appears in the remaining provisions of this act.

(2) That this act be deemed to be an exercise of the authority granted in the Montana constitution, as adopted June 6, 1972, and in particular, a response to the mandate expressed in article IX thereof, and also be deemed to be an exercise of the general police power to provide for the health and welfare of the people.

Section 3. Unless the context requires otherwise in this act:

- (1) "mineral" means coal, clay, phosphate rock, and uranium;
- (2) "overburden" means all of the earth and other materials which lie above a natural mineral deposit and also means such earth and other material after removal from their natural state in the process of strip mining;
- (3) "strip mining" means any part of the process followed in the production of mineral by the open cut method including mining by the auger method or any similar method which penetrates a mineral deposit and removes mineral directly through a series of openings made by a machine which enters the deposit from a surface excavation, or any other mining method or process in which the strata or overburden is removed or displaced in order to recover the mineral;
- (4) "prospecting" means the removal of overburden, core drilling, construction of roads or any other disturbance of the surface for the purpose of determining the location, quantity, or quality of a natural mineral deposit;
- (5) "area of land affected" means the area of land from which overburden is to be or has been removed and upon which the overburden is to be or has been deposited and includes all lands affected by the construction of new railroad loops and roads or the improvement or use of existing railroad loops and roads to gain access and to haul the mineral;
- (6) "operation" means all of the premises, facilities, railroad loops, roads, and equipment used in the process of producing and removing mineral from a designated strip mine area, or prospecting for the purpose of determining the location, quality, or quantity of a natural mineral deposit;
- (7) "operator" means a person engaged in strip mining who removes or intends to remove more than ten thousand (10,000) cubic yards of mineral or overburden;
- (8) "person" means a person, partnership, corporation, association, or other legal entity, or any political subdivision, or agency of the state;
- (9) "method of operation" means the method or manner by which the cut or open pit is made, the overburden is placed or handled, water is controlled and other acts are performed by the operator in the process of uncovering and removing the mineral that affect the reclamation of the area to be and affected;
- (10) "spoil" means the unconsolidated mineral matter

naturally present on the surface of the earth that has been subjected to and influenced by genetic and environmental factors of parent material, climate, macro- and microorganisms, and topography, all acting over a period of time, and that is necessary for the growth and regeneration of vegetation on the surface of the earth;

(11) "department" means the department of state lands provided for in title 82A, chapter 11;

(12) "commissioner" means the commissioner of state lands provided for in section 82A-1104;

(13) "board" means the board of land commissioners provided for in article X, section 4 of the constitution of this state;

(14) "reclamation" means backfilling, grading, highwall reduction, topsoiling, planting, revegetation, and other work to restore an area of land affected by strip mining under a plan approved by the department;

(15) "degree" means from the horizontal, and in each case is subject to a tolerance of five percent (5%) error;

(16) "contour strip mining" means that strip mining method commonly carried out in areas of rough and hilly topography in which the coal or mineral seam outcrops along the side of the slope and entrance is made to the seam by excavating a bench or table cut at and along the site of the seam outcropping with the excavated overburden commonly being cast down the slope below the mineral seam and the operating bench;

(17) "bench" means the ledge, shelf, table, or terrace formed in the contour method of strip mining;

(18) "fill bench" means that portion of a bench or table which is formed by depositing overburden beyond or down slope from the cut section as formed in the contour method of strip mining;

(19) "abandoned" means an operation where no mineral is being produced and where the department determines that the operation will not continue or resume.

Section 4. The board:

(1) shall issue after an opportunity for a hearing, orders requiring an operator to adopt the remedial measures necessary to comply with this act and rules adopted under this act;

(2) shall issue after an opportunity for a hearing, a final order directing the department to revoke a permit, when the requirements set forth by the notice of noncompliance, order of suspension, or an order of the board requiring remedial measures have not been complied with according to the terms herein;

(3) shall adopt after an opportunity for a hearing, general rules pertaining to strip mining to accomplish the purposes of this act;

(4) shall conduct hearings under provisions of this act or rules adopted by the board.

Section 5. The department:

(1) shall exercise general supervision, administration, and enforcement of this act and all rules and orders adopted under this act;

(2) shall examine and pass upon all plans and specifications submitted by the operator for the method of operation, backfilling, grading, highwall reduction, topsoiling and for the reclamation of

the area of land affected by his operation;

(3) shall order the suspension of any permit for failure to comply with this act or any rule adopted under this act;

(4) shall order the halting of any operation that is started without first having secured a permit as required by this act;

(5) shall make investigations and inspections necessary to insure compliance with this act;

(6) may encourage and conduct investigations, research, experiments and demonstrations, and collect and disseminate information relating to strip mining and reclamation of lands and waters affected by strip mining;

(7) may adopt rules with respect to the filing of reports, the issuance of permits and other matters of procedure and administration.

Section 6. (1) An operator may not engage in strip mining without having first obtained from the department a permit designating the area of land affected by the operation. The permit shall authorize the operator to engage in strip mining upon the area of land described in his application and designated in the permit for a period of one (1) year from the date of its issuance. Such permit shall be renewable from year to year thereafter upon application to the department at least thirty (30) but not more than sixty (60) days prior to the renewal date so long as the operator is in compliance with the requirements of this act, the rules hereunder, and the reclamation plan provided for in section 10 of this act, and agrees to comply with all applicable laws and rules in effect at the time of renewal. Such renewal shall further be subject to the denial provisions of sections 9 and 13 of this act.

(2) An operator desiring a permit shall file an application which shall contain a complete and detailed plan for the mining, reclamation, revegetation, and rehabilitation of the land and water to be affected by the operation. Such plan shall reflect thorough advance investigation and study by the operator and shall include all known or readily discoverable past and present uses of the land and water to be affected and the approximate periods of such use and shall state:

(a) the location and area of land to be affected by the operation, with a description of access to the area from the nearest public highways;

(b) the names and addresses of the owners of record of the surface of the area of land to be affected by the permit and the owners of record of all surface area within one-half (.5) mile of any part of the affected area;

(c) the names and addresses of the present owners of record of all subsurface minerals in the land to be affected;

(d) the source of the applicant's legal right to mine the mineral on the land affected by the permit;

(e) the permanent and temporary post office addresses of the applicant;

(f) whether the applicant or any person associated with the applicant holds or has held any other permits under this act, and an identification of those permits;

(g) whether the applicant is in compliance with subsection (2) of section 17 and whether every officer, partner, director, or any individual owning of record or beneficially (alone or with

associates) if known, ten percent (10%) or more of any class of stock of the applicant, is subject to any of the provisions of subsection (2) of section 17 and he shall so certify, and whether any of the foregoing parties or persons have ever had a strip mining licence or permit issued by any other state or federal agency revoked, or have ever forfeited a strip mining bond or a security deposited in lieu of a bond and if so, a detailed explanation of the facts involved in each case must be attached;

(h) the names and addresses of any persons who are engaged in strip mining activities on behalf of the applicant;

(i) the annual rainfall and the direction and average velocity of the prevailing winds in the area where the applicant has requested a permit;

(j) the results of any test borings or core samplings which the applicant or his agent has conducted on the land to be affected, including the nature and the depth of the various strata or overburden and topsoil, the quantities and location of subsurface water and its quality, the thickness of any mineral seam, an analysis of the chemical properties of such minerals, including the acidity, sulphur content, and trace mineral elements of any coal seam, as well as the british thermal unit (B.T.U.) content of such seam, and an analysis of the overburden, including topsoil. If test borings or core samplings are submitted, each permit application shall contain two (2) copies each of two (2) sets of geologic cross-sections accurately depicting the known geologic makeup beneath the surface of the affected land. Each set shall depict subsurface conditions at five hundred (500) foot intervals across the surface and shall run at a ninety (90) degree angle to the other set. Each cross-section shall depict the thickness and geological character of all known strata beginning with the top soil;

(k) the name and date of a daily newspaper of general circulation within the county in which the applicant has prominently published an announcement of his application for a strip mining permit, and a detailed description of the area of land to be affected should a permit be granted;

(l) such other or further information as the department may require.

(3) The application for a permit shall be accompanied by two (2) copies of all maps meeting the requirements of the subsections below. The maps shall:

(a) identify the area to correspond with the application;

(b) show any adjacent deep mining and the boundaries of surface properties and names of owners of record of the affected area and within one thousand (1,000) feet of any part of the affected area;

(c) show the names and locations of all streams, creeks, or other bodies of water, roads, buildings, cemeteries, oil and gas wells, and utility lines on the area of land affected and within one thousand (1,000) feet of such area;

(d) show by appropriate markings the boundaries of the area of land affected, any cropline of the seam or deposit of mineral to be mined, and the total number of acres involved in the area of land affected;

(e) show the date on which the map was prepared and the north point;

(f) show the drainage plan on and away from the area of land affected. This plan shall indicate the directional flow of water,

constructed drainways, natural waterways used for drainage, and the streams or tributaries receiving the discharge;

- (g) show the proposed location of waste or refuse area;
- (h) show the proposed location of temporary subsoil and topsoil storage area;
- (i) show the location of test boring holes;
- (j) show the surface location lines of any geologic cross-sections which have been submitted;
- (k) show a listing of plant varieties encountered in the area to be affected and their relative dominance in the area, together with an enumeration of tree varieties and the approximate number of each variety occurring per acre on the area to be affected, and the locations generally of the various kinds and varieties of plants, including but not limited to grasses, shrubs, legumes, forbs and trees;

(l) be certified as follows: "I, the undersigned, hereby certify that this map is correct, and shows to the best of my knowledge and belief all the information required by the strip mining laws of this state." The certification shall be signed and notarized. The department may reject a map as incomplete if its accuracy is not so attested;

(m) contain such other or further information as the department may require.

(4) In addition to the information and maps required above, each application for a permit shall be accompanied by detailed plans or proposals showing the method of operation, the manner, time or distance, and estimated cost for backfilling, grading work, highwall reduction, topsoiling, planting, revegetating, and a reclamation plan for the area affected by the operation, which proposals shall meet the requirements of this act and rules adopted under this act.

(5) An application fee of fifty dollars (\$50) shall be paid before the permit required in this section shall be issued. The operator shall file with the department a bond payable to the state of Montana with surety satisfactory to the department in the penal sum to be determined by the board (on the recommendation of the commissioner) of not less than two hundred dollars (\$200) nor more than twenty-five hundred dollars (\$2,500) for each acre or fraction thereof of the area of land affected, with a minimum bond of two thousand dollars (\$2,000), conditioned upon the faithful performance of the requirements set forth in this act and of the rules of the board. In determining the amount of the bond within the above limits, the board shall take into consideration the character and nature of the overburden, the future suitable use of the land involved and the cost of backfilling, grading, highwall reduction, topsoiling, and reclamation to be required; but in no event shall the bond be less than the total estimated cost to the state of completing the work described in the reclamation plan.

Section 7. The department may increase or reduce the area of land affected by an operation under a permit on application by an operator, but an increase may not extend the period for which an original permit was issued. An operator may, at any time within one (1) year from the date of issuance of the permit, apply to the department for an amendment of the permit so as to increase or reduce the acreage affected by it. The operator shall file an application and map in the same form and with the same content as required for an original application under this act and shall pay an application fee of fifty dollars (\$50) and shall file with the department a supplemental bond in the amount to be determined under section 6 for each acre or fraction of an acre of the increase approved. If the department approves a reduction in the acreage

covered by the original or supplemental permit, it shall release the bond for each acre reduced, but in no case shall the bond be reduced below two thousand dollars (\$2,000), except as provided in subsection (5) of section 6.

Section 8. (1) On and after the effective date of this act prospecting by any person on land not included in a valid strip mining permit shall be unlawful without possessing a valid prospecting permit issued by the department as provided in this section. No prospecting permit shall be issued until the operator submits an application, the application is examined, amended if necessary, and approved by the department, and adequate reclamation performance bond is posted, all of which prerequisites must be done in conformity with the requirements of this act.

(2) An application for a prospecting permit shall be made in writing, notarized, and submitted to the department in duplicate upon forms prepared and furnished by it. The application shall include among other things, a prospecting map and a prospecting reclamation plan of substantially the same character as required for a surface mining map and reclamation plan under this act. The department shall determine, by rules and regulations, the precise nature of such required prospecting map and reclamation plan. Any operator who intends to prospect by means of core drilling shall specify the location and number of holes to be drilled, methods to be used in sealing aquifers, and such other information as may be required by the department. The applicant must state what types of prospecting and excavating techniques will be employed on the affected land. The application shall also include any other or further information the department may require.

(3) The application shall be accompanied by a fee of one hundred dollars (\$100). This fee shall be used as a credit toward the strip mining permit fee provided by this act if the area covered by the prospecting permit becomes covered by a valid surface mining permit obtained before or at the time the prospecting permit expires.

(4) Before the department gives final approval to the prospecting permit application, the applicant shall file with the department a reclamation and revegetation bond in a form and in an amount as determined in the same manner for strip mining reclamation and revegetation bonds under this act.

(5) In the event that the holder of a prospecting permit desires to strip mine the area covered by the prospecting permit, and has fulfilled all the requirements for a strip mining permit, the department may permit the postponement of the reclamation of the acreage prospected if that acreage is incorporated into the complete reclamation plan submitted with the application for a strip mining permit. Any land actually affected by prospecting or excavating under a prospecting permit and not covered by the strip mining reclamation plan shall be promptly reclaimed.

(6) The prospecting permit shall be valid for one (1) year, and shall be subject to renewal, suspension, and revocation in the same manner as strip mining permits under this act.

(7) The holder of the prospecting permit shall file with the department the same progress reports, maps, and revegetation progress reports, as are required of strip mining operators under this act.

Section 9. (1) An application for a prospecting or strip mining permit shall not be approved by the department if there is found on the basis of the information set forth in the application, an on-site inspection, and an evaluation of the operation by the department that the requirements of the act or rules will not be observed or that the proposed method of operation, backfilling, grading, highwall reduction, topsoiling, revegetation, or reclamation of the affected area cannot be carried out consistent with the purpose of this act.

(2) The department shall not approve the application for prospecting or strip mining permit where the area of land described in the application includes land having special, exceptional, critical, or unique characteristics, or that mining or prospecting on that area would adversely affect the use, enjoyment, or fundamental character of neighboring land having special, exceptional, critical, or unique characteristics. For the purposes of this act, land is defined as having such characteristics if it possesses special, exceptional, critical or unique:

(a) biological productivity, the loss of which would jeopardize certain species of wildlife or domestic stock; or

(b) ecological fragility, in the sense that the land, once adversely affected, could not return to its former ecological role in the reasonable foreseeable future; or

(c) ecological importance, in the sense that the particular land has such a strong influence on the total ecosystem of which it is a part that even temporary effects felt by it could precipitate a system-wide reaction of unpredictable scope or dimensions; or

(d) scenic, historic, archeologic, topographic, geologic, ethnologic, scientific, cultural, or recreational significance. In applying this subsection, particular attention should be paid to the inadequate preservation previously accorded Plains Indian history and culture.

(3) If the department finds that the overburden on any part of the area of land described in the application for a prospecting or strip mining permit is such that experience in the state with a similar type of operation upon land with similar overburden shows that substantial deposition of sediment in streambeds, landslides, or water pollution cannot feasibly be prevented, the department shall delete that part of the land described in the application upon which the overburden exists.

(4) If the department finds that the operation will constitute a hazard to a dwelling house, public building, school, church, cemetery, commercial or institutional building, public road, stream, lake, or other public property, the department shall delete those areas from the prospecting or strip mining permit application before it can be approved.

Section 10. (1) As rapidly, completely, and effectively as the most modern technology and the most advanced state of the art will allow, each operator granted a permit under this act, shall reclaim and revegetate the land affected by his operation. Under the provisions of this act and rules adopted by the board, an operator shall prepare and carry out a method of operation, plan of grading, backfilling, highwall reduction, topsoiling and a reclamation plan for the area of land affected by his operation. In developing a method of operation, and plans of backfilling, grading, highwall reduction, topsoiling and reclamation, all measures shall be taken to eliminate damages to landowners and members of the public, their real and personal property, public roads, streams and all other public property from soil erosion, landslides, water pollution, and hazards dangerous to life and property. The reclamation plan shall set forth in detail the manner in which the applicant intends to comply with this section and sections 11, 12 and 13 of this act. The plan shall be submitted to the department and the department shall notify the applicant by registered mail within one hundred twenty (120) days after receipt of the plan and complete application if it is or is not acceptable. The department may extend the one hundred twenty (120) days an additional one hundred twenty (120) days upon notification of the operator in writing. If the plan is not acceptable, the department shall set forth the reasons why the plan is not acceptable and it may propose modifications, delete areas, or reject the entire plan. A land owner, operator, or any person aggrieved by the decision of the

Department may, by written notice, request a hearing by the board. The board shall notify the person by registered mail within twenty (20) days after the hearing of its decision. Every reclamation plan shall be subject to annual review and modification.

(2) In addition to the method of operation, grading, backfilling, highwall reduction, topsoiling and reclamation requirements of this act and rules adopted under this act, the operator, consistent with the directives of subsection (1) of this section shall:

(a) bury under adequate fill all toxic materials, shale, mineral, or any other material determined by the department to be acid producing, toxic, undesirable, or creating a hazard;

(b) seal off, as directed by rules, any breakthrough of water creating a hazard;

(c) impound, drain, or treat all runoff water so as to reduce soil erosion, damage to grazing and agricultural lands, and pollution of surface and subsurface waters;

(d) remove or bury all metal, lumber, and other refuse resulting from the operation;

(e) use explosives in connection with the operation only in accordance with department regulations designed to minimize noise, surface damage to adjacent lands and water pollution, ensure public safety, and for other purposes.

(3) An operator may not throw, dump, pile or permit the dumping, piling, or throwing or otherwise placing any overburden, stones, rocks, mineral, earth, soil, dirt, debris, trees, wood, logs or any other materials or substances of any kind or nature beyond or outside of the area of land which is under permit and for which a bond has been posted under section 6, or place the materials described in this section in such a way that normal erosion or slides brought about by natural physical causes will permit the materials to go beyond or outside of the area of land which is under permit and for which a bond has been posted under section 6.

Section 11. (1) Area strip mining, a method of operation which does not produce a bench or fill bench, is required. All highwalls must be reduced and the steepest slope of the reduced highwall shall be no greater than twenty (20) degrees from the horizontal. Highwall reduction shall be commenced at or beyond the top of the highwall and sloped to the graded spoil bank. Reduction, backfilling, and grading shall eliminate all highwalls and spoil peaks. The area of land affected shall be restored to the approximate original contour of the land. When directed by the department, the operator shall construct in the final grading, such diversion ditches, depressions, or terraces as will accumulate or control the water runoff. Additional restoration work may be required by the department according to rules adopted by the board.

(2) In addition to the backfilling and grading requirements, the operator's method of operation on steep slopes may be regulated and controlled according to rules adopted by the board. These rules may require any measure whatsoever to accomplish the purpose of this act.

(3) All available topsoil shall be removed in a separate layer, guarded from erosion and pollution, kept in such a condition that it can sustain vegetation of at least the quality and variety it sustained prior to removal, and returned as the top layer after the operation has been backfilled and graded; provided that the operator shall accord substantially the same treatment to any subsurface deposit of material that is capable, as determined by the department, of supporting surface vegetation virtually as well as the present topsoil.

(4) As determined by rules of the board, time limits shall be established requiring backfilling, grading, highwall reduction, topsoiling, planting, and revegetation to be kept current. All backfilling, grading, and topsoiling shall be completed before necessary equipment is moved from the operation.

(5) When the backfilling, grading, and topsoiling have been completed and approved by the department, the commissioner may release so much of the bond which was filed for that portion of the operation as the commissioner may determine, provided that no less than two hundred dollars (\$200) per acre shall be retained by the department until such time as the planting and revegetation is done according to law and approved by the department, at which time the commissioner shall release the bond in the remaining amount.

(6) An operator may propose alternative plans other than backfilling, grading, highwall reduction, or topsoiling if the restoration will be consistent with the purpose of this act. These plans shall be submitted to the department, and, after consultation with the landowner, if the plans are approved by the board and complied with within the time limits as may be determined by the board as being reasonable for carrying out the plans, the backfilling, grading, highwall reduction, or topsoiling requirements of this act may be modified by the board. An operator who proposes alternative plans that will affect an existing permit shall comply with the notice requirement of section 6 (2) (k).

Section 12. After the operation has been backfilled, graded, topsoiled, and approved by the department, the operator shall prepare the soil and plant such legumes, grasses, shrubs, and trees upon the area of land affected as are necessary to provide a suitable permanent diverse vegetative cover capable of:

(a) feeding and withstanding grazing pressure from a quantity and mixture of wildlife and livestock at least comparable to that which the land could have sustained prior to the operation;

(b) regenerating under the natural conditions prevailing at the site, including occasional drought, heavy snowfalls, and strong winds; and

(c) preventing soil erosion to the extent achieved prior to the operation.

The seed or plant mixtures, quantities, method of planting, type and amount of lime or fertilizer, mulching, irrigation, fencing, and any other measures necessary to provide a suitable permanent diverse vegetative cover shall be defined by rules of the board.

Section 13. The operator shall commence the reclamation of the area of land affected by his operation as soon as possible after the beginning of strip mining of that area in accordance with plans previously approved by the department. Those grading, backfilling, topsoiling, and water management practices that are approved in the plans shall be kept current with the operation as defined by rules of the board and a permit or supplement to a permit may not be issued, if in the discretion of the department, these practices are not current.

Section 14. (1) At least sixty (60) days prior to the date of each permit expiration, the operator shall file a planting report with the department on a form to be prescribed and furnished by the department, giving the following information:

(a) identification of the operation;

(b) the type of planting or seeding, including mixtures and amounts;

- (c) the date of planting or seeding;
- (d) the area of land planted;
- (c) any other relevant information the department requires.

(2) All planting reports shall be certified by the operator.

(3) Inspection and evaluation for permanent diverse vegetative cover shall be made as soon as it is possible to determine if a satisfactory stand has been established. If the department determines that a satisfactory permanent diverse vegetative cover has been established, it shall release the remaining bond held on the area reclaimed after public notice and an opportunity for a hearing; but in no event shall such remaining bond be released prior to a period of five (5) years from the initial planting provided for in section 12 of this act.

Section 15. All legumes, grasses, shrubs, and trees which are planted or seeded on the area of land affected as required by this act or rules adopted under this act, become the property of the landowner, after complete release of the bond, unless the operator and the landowner agree otherwise.

Section 16. Within sixty (60) days after each date of expiration of a permit, the operator shall annually file with the department a report stating the exact number of acres of land affected by the operation, the extent of the reclamation already accomplished by him, and any other information required by the rules of the department and the board. The report shall be accompanied by a copy of the map filed with the original application which shall show any revisions made necessary by results of the operation.

Section 17. (1) If any of the requirements of this act or rules or orders of the department and the board have not been complied with within the time limits set by the department or the board or by this act, the department shall serve a notice of noncompliance on the operator, or where found necessary, the commissioner shall order the suspension of a permit. The notice or order shall be handed to the operator in person or served by registered mail addressed to the permanent address shown on the application for a permit. The notice of noncompliance or order of suspension shall specify in what respects the operator has failed to comply with this act or the rules or orders of the department and the board. If the operator has not complied with the requirement set forth in the notice of noncompliance or order of suspension within time limits set therein, the permit may be revoked by order of the board and the performance bond forfeited to the department.

(2) Any additional permits held by an operator whose mining permit has been revoked shall be suspended and the operator is not eligible to receive another permit or to have the suspended permits reinstated until he has complied with all the requirements of this act in respect to former permits issued him. An operator who has forfeited a bond is not eligible to receive another permit unless the land for which the bond was forfeited has been reclaimed without cost to the state, or the operator has paid into the reclamation account a sum together with the value of the bond, the board finds adequate to reclaim the lands. The department may not issue any additional permits to an operator who has repeatedly been in non-compliance or violation of this act.

Section 18. Where one operator succeeds another at an uncompleted operation, either by sale, assignment, lease, or otherwise, the department may release the first operator from all liability under this act as to that particular operation if both operators have been issued a permit and have otherwise complied with the requirements of this act, and the successor operator assumes as part of his obligation under this act, all liability for the reclamation

of the area of land affected by the former operator.

Section 19. (1) All fees, forfeit funds, and other moneys available or paid to the department under the provisions of this act shall be placed in the state treasury and credited to a special agency account to be designated as the strip mining and reclamation fund. This fund shall be available to the department by appropriation and shall be expended for the administration and enforcement of this act and for the reclamation and revegetation of land and the rehabilitation of water affected by any mining operations. Any unencumbered and any unexpended balance of this fund remaining at the end of any fiscal year shall not lapse but shall be carried forward for the purposes of this act until expended or until appropriated by subsequent legislative action.

Section 20. (1) The board may receive any federal funds, state funds, or any other funds for the reclamation of land affected by strip mining. The board may have reclamation work done by its own employees or by employees of other governmental agencies, soil conservation districts, or through contracts with qualified persons.

(2) Any funds or any public works programs available to the board shall be used and expended to reclaim and rehabilitate lands that have been subjected to strip mining that have not been reclaimed and rehabilitated in accordance with the standards of this act.

Section 21. The board may reclaim, in keeping with the provisions of this act, any affected lands with respect to which a bond has been forfeited and to use moneys appropriated from the strip mining and reclamation fund for such purposes.

Section 22. A resident of this state, with knowledge that a requirement of this act or a rule adopted under this act, is not being enforced by a public officer or employee whose duty it is to enforce the requirement or rule may bring the failure to enforce to the attention of the public officer or employee by a written statement under oath that shall state the specific facts of the failure to enforce the requirement or rule. Knowingly making false statements or charges in the affidavit subjects the affiant to penalties prescribed under the law of perjury.

(2) If the public officer or employee neglects or refuses for an unreasonable time after receipt of the statement to enforce the requirement or rule, the resident may bring an action of mandamus in the district court of the first judicial district of this state, in and for the county of Lewis and Clark, or in the district court of the county in which the land is located. The court, if it finds that a requirement of this act or a rule adopted under this act, is not being enforced shall order the public officer or employee, whose duty it is to enforce the requirement or rule, to perform his duties. If he fails to do so, the public officer or employee shall be held in contempt of court and is subject to the penalties provided by law.

(3) An owner of an interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from an underground source other than a subterranean stream having a permanent, distinct, and known channel, may sue an operator to recover damages for contamination, diminution, or interruption of the water supply, proximately resulting from strip mining.

(4) A servient tract of land is not bound to receive surface water contaminated by strip mining on a dominant tract of land, and the owner of the servient tract may sue an operator to recover the damages proximately resulting from the natural drainage from the dominant tract of surface waters contaminated by strip mining on the dominant tract.

(5) This section does not create, modify, or affect any right, liability, or remedy other than as expressly provided in this section.

Section 23. (1) A person or operator who violates any of the provisions of this act or rules or orders adopted under this act shall pay a civil penalty of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for the violation, and an additional civil penalty of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each day during which a violation continues, and may be enjoined from continuing such violations as hereinafter provided in this section. These penalties shall be recoverable in any action brought in the name of the state of Montana by the attorney general in the district court of the first judicial district of this state, in and for the county of Lewis and Clark, or in the district court having jurisdiction of the defendant.

(2) The attorney general shall, upon the request of the commissioner, sue for the recovery of the penalties provided in this section for, and bring an action for a restraining order, temporary or permanent injunction, against an operator or other person violating or threatening to violate an order adopted under this act.

(3) A person who willfully violates any of the provisions of this act, or any determination or order adopted under this act which has become final is guilty of a misdemeanor and shall be fined not less than five hundred dollars (\$500) and not more than five thousand dollars (\$5,000). Each day on which a violation occurs constitutes a separate offense.

Section 24. All hearings and appeal procedures shall be in accordance with sections 82-4209 through 82-4217.

Section 25. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 26. Sections 50-1018 through 50-1033, R.C.M. 1947, are repealed.

Section 27. Every operator shall within ninety (90) days after the effective date of this act file with the department an application for a permit.

Section 28. Ninety (90) days after the effective date of this act, the state shall proceed to cancel, according to their terms, all existing contracts entered into pursuant to chapter 245, laws of Montana, 1967. If the contract does not provide according to its terms, for the cancellation, it shall be terminated and void within two hundred seventy (270) days from the effective date of this act.

Section 29. This act is effective on its passage and approval.

The Act Is Now Law.

HOUSE BILL NO. 127

INTRODUCED BY BARDENIE, GERKE, PAGG, TURMAN, BAUCUS, REGAN, NORMAN, HOLMES, DRISCOLL, SHELDEN, JOHNSTON, EDLAND, TOBE, H. HARPER, HAYES, MCKITTRICK, GUNDERSON, R. HARPER, STEPHENS, AINSCATH, SWANBERG, QUILICI, KOSENA, HALL, GREELY, BRADLEY, FLEMING, MENAHAN, SCHEPENS, COLBERG, TIERNEY, FASBENDER

February 26, 1973

February 28, 1973

March 1, 1973

March 2, 1973

March 3, 1973

March 6, 1973

March 7, 1973

IN THE HOUSE

Read first time and referred to Committee on Natural Resources.

Committee recommends bill do pass as amended. Report adopted and referred to Bills Committee for printing.

Reported correctly printed. Report adopted. Referred to second reading.

Committee of the Whole recommended that consideration be passed for the day.

Recommended favorably by Committee of the Whole as amended. Report adopted and referred to Bills Committee for engrossing.

Reported correctly engrossed. Report adopted and referred to calendar for third reading.

On motion rules suspended and bill placed on third reading this day.

Passed as amended on third reading and referred to Bills Committee for engrossing.

Reported correctly engrossed. Transmitted to Senate for its concurrence.

IN THE SENATE

Received from the House after the 40th legislative day.

Considered read and referred to Committee on Natural Resources.

Committee recommend that bill be concurred in as amended. Report adopted. Bill referred to second reading.

Committee of the Whole recommend bill be concurred in as amended. Report adopted. Referred to calendar for third reading.

Read third time and concurred in as amended. Title and history agreed to. Returned to House for concurrence in Senate amendments.

IN THE HOUSE

Referred to second reading for concurrence in Senate amendments.

Senate amendments concurred in by Committee of the Whole. Placed on calendar for third reading.

Senate amendments concurred in on third reading. Referred to Bills Committee for enrolling.

Reported correctly enrolled.

conversion facilities will produce minimal adverse effects on the environment and upon the citizens of this state by providing that no power or energy conversion facility shall hereafter be constructed or operated within this state without a certificate of environmental compatibility and public need acquired pursuant to this act.

Section 3. The following words, when used in this act, shall have the following meanings unless otherwise clearly apparent from the context:

- (1) the word "department" means the department of natural resources and conservation.
- (2) the word "board" means the board of natural resources and conservation.
- (3) the words "utility facility" or "facility" mean:
 - (a) any energy generating and conversion plant and associated facilities
 - (i) designed for, or capable of, generating at fifty (50) megawatts of electricity or more or any addition thereto (except pollution control facilities approved by the department of health and environmental sciences added to an existing plant) having an estimated cost in excess of two hundred fifty thousand dollars (\$250,000), or

(ii) designed for, or capable of, producing one hundred million (100,000,000) cubic feet of gas per day or more or any addition thereto having an estimated cost in excess of two hundred

AN ACT TO VEST IN THE DEPARTMENT AND BOARD OF NATURAL RESOURCES AND CONSERVATION THE AUTHORITY TO REQUIRE AND REVIEW LONG-RANGE PLANNING BY CERTAIN UTILITIES, TO GIVE APPROVAL TO ENERGY GENERATION AND CONVERSION PLANT SITES AND ASSOCIATED FACILITIES, TO REQUIRE PRECONSTRUCTION CERTIFICATION OF SUCH FACILITIES; PROVIDING PENALTIES FOR VIOLATION OF THIS ACT; AND PROVIDING AN EFFECTIVE DATE. *

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA: Section 1. This act may be cited as the Montana Utility Siting Act of 1973.

Section 2. It is the constitutionally declared policy of this state to maintain and improve a clean and healthful environment for present and future generations; to protect the environmental life support system from degradation and prevent unreasonable depletion and degradation of natural resources; and to provide for administration and enforcement to attain these objectives.

The legislature finds that the construction of additional power and energy conversion facilities may be necessary to meet the increasing need for electricity and other energy, and that such facilities have an effect on the environment, an impact on population concentration, and an effect on the welfare of the citizens of this state. Therefore, it is necessary to ensure that the location, construction and operation of power and energy

requirements for transmission lines in section 6, subsection (1) and section 7, subsection (1) of this act if the proposed length of the transmission line will not exceed thirty (30) miles,

(iv) unless specifically covered by subsections (i), (ii) or (iii) of this subsection, the construction of all transmission lines and associated facilities shall be subject to the two (2) year time requirement of section 6, subsection (1), and the six hundred (600) day requirement of section 7, subsection (1),

(v) the provisions of subsections (i) and (ii) of this subsection shall not be construed as authorizing the simultaneous construction of two (2) or more transmission lines serving the same community or customer which would, when constructed separately, come within the exceptions of subsections (1) and (ii);

(c) a gas or liquid transmission line and associated facilities designed for, or capable of, transporting gas or liquid hydro-carbon products from a gasification or liquefaction facility of the size indicated in subsections (a)(ii) and (a)(iii) of this section.

(4) the words "associated facilities" include, but are not limited to, transportation links of any kind, aqueducts, diversion dams and any other device or equipment associated with the production, or delivery of the energy form produced by a facility.

(5) the words "commence to construct" mean any clearing of land, excavation, construction, or other action that would affect

fifty thousand dollars (\$250,000), or

(iii) designed for, or capable of, producing fifty thousand (50,000) barrels of liquid hydro-carbon products per day or more or any addition thereto having an estimated cost in excess of two hundred fifty thousand dollars (\$250,000), or

(iv) designed for or capable of enriching uranium minerals;

(b) an electric transmission line and associated facilities of a design capacity of thirty-four and one-half (34.5) kilovolts or more, except that the following transmission lines and associated facilities shall be subject to certain exceptions under the act:

(i) a transmission line and associated facilities with a design capacity of sixty-nine (69) kilovolts or less and which will be constructed above ground for a distance of ten (10) miles or less shall not be considered a utility facility within the definitions of this act,

(ii) a transmission line and associated facilities with a design capacity of one hundred sixty-one (161) kilovolts or less and which will be constructed underground for a distance of five (5) miles or less shall not be considered a utility facility within the definitions of this act,

(iii) a transmission line or associated facilities of a design capacity of one hundred sixty-one (161) kilovolts or less which does not meet the requirements of subsections (i) and (ii) of this subsection shall be subject to the specific time review

(2) A certificate may be transferred, subject to the approval of the department, to a person who agrees to comply with the terms, conditions and modifications contained therein.

(3) This act shall not apply to any utility facility over which an agency of the federal government has exclusive jurisdiction.

Section 5. Every "producer" as defined in chapter 16 of title 84, the electrical energy producers' license tax, shall, in addition to the sum required to be paid by that act, pay an additional twenty-five hundredths percent (0.25%) of the gross amount as shown on the statement which is required by that act, in the same manner and within the time provided by that act. The state board of equalization shall report to the state treasurer separately the amount transmitted to the state treasurer which is added to the electrical energy producers' license tax by this section of this act.

The legislature shall appropriate sufficient funds to finance the department's activities in carrying out its duties under this act. The legislature shall provide a tax on gasification, liquefaction and uranium enrichment facilities sufficient to produce an amount of revenue equal to that derived from electrical energy producers under this section.

Section 6. (1) At least two (2) years prior to anticipated commencement of construction of a utility facility as defined in sections 3(3)(a), 3(3)(b)(iv), and 3(c) and at least nine (9)

the environment of the site or route of a utility facility, but do not include changes needed for temporary use of sites or routes for non-utility purposes, or uses in securing geological data, including necessary borings to ascertain foundation conditions.

(6) the word "municipality" means any county or municipality within this state.

(7) the word "person" includes any individual, group, firm, partnership, corporation, cooperative, association, government subdivision, government agency, local government, or other organization.

(8) the words "public utility" or "utility" mean any person engaged in any aspect of the production, storage, sale, delivery or furnishing of heat, electricity, gas, or energy in any form for ultimate public use.

(9) "certificate" means the certificate of environmental compatibility and public need issued by the board and required for the construction or operation of any facility.

Section 4. (1) No person shall commence to construct a utility facility in the state without first having obtained a certificate issued with respect to such facility by the board. Any facility, with respect to which a certificate is required, shall thereafter be constructed, operated and maintained in conformity with such certificate and any terms, conditions and modifications contained therein. A certificate may only be issued pursuant to this act.

months prior to the anticipated commencement date of the construction of a utility facility as defined in section 3(3)(b)(iii), an applicant for a certificate shall file with the department an application, in such form as the department may prescribe, containing the following information:

(a) a description of the location and of the utility facility to be built thereon;

(b) a summary of any studies which have been made of the environmental impact of the facility;

(c) a statement explaining the need for the facility;

(d) a description of any reasonable alternate location or locations for the proposed facility, a description of the comparative merits and detriments of each location submitted, and a statement of the reasons why the primary proposed location is best suited for the facility; and

(e) such other information as the applicant may consider relevant or as the department may by regulation or order require. A copy or copies of the studies referred to in clause (b) above shall be filed with the department, if ordered, and shall be available for public inspection.

(2) A filing fee shall be deposited in the state general fund. Said fee shall be based upon the estimated cost of the facility according to the declining scale which follows. The applicant shall pay the accumulated sums calculated as follows: three percent (3%) of any estimated cost up to one million dollars

(\$1,000,000); plus one percent (1%) of any estimated cost over a million dollars and up to twenty million dollars (\$20,000,000); plus one-half of one percent (0.5%) of any estimated cost over twenty million dollars (\$20,000,000) and up to one hundred million dollars (\$100,000,000); plus one-quarter of one percent (0.25%) of any amount of estimated cost over one hundred million (\$100,000,000) and up to three hundred million dollars (\$300,000,000); plus one-tenth of one percent (0.1%) of any amount of estimated cost over three hundred million dollars (\$300,000,000). It is the intent of the legislature that the revenues derived from the filing fee be used by the department in compelling the information required for rendering a decision on a certificate and for carrying out its other responsibilities under this act.

(3) Each application shall be accompanied by proof of service of a copy of such application on the chief executive officer of each municipality and the head of each government agency, charged with the duty of protecting the environment or of planning land use, in the area in which any portion of such facility is to be located, both as primarily and as alternatively proposed. The copy of such application shall be accompanied by a notice specifying the date on or about which the application is to be filed.

(4) Each application shall also be accompanied by proof that public notice thereof was given to persons, residing in the

municipalities entitled to receive notice under subsection (3) of this section, by the publication of a summary of the application, and the date on or about which it is to be filed, in such newspapers as will serve substantially to inform such persons of the application.

(5) Inadvertent failure of service on, or notice to, any of the municipalities, governments, agencies or persons identified in subsections (3) and (4) of this section may be cured pursuant to orders of the department designed to afford them adequate notice to enable their effective participation in the proceeding. In addition, the department may, after filing, require the applicant to serve notice of the application or copies thereof or both upon such other persons, and file proof thereof, as the department may deem appropriate.

(6) An application for an amendment of a certificate shall be in such form and contain such information as the department shall prescribe. Notice of such an application shall be given as set forth in subsections (3) and (4) of this section.

(7) The board may waive compliance with the time limit of this section if an applicant makes a clear and convincing showing that an immediate need for a facility exists and that the applicant did not have knowledge that the need existed sufficiently in advance of the need to file an application within the time provided in subsection (1) of this section.

Section 7. (1) Upon receipt of an application complying

with section 6, the department shall commence an intensive study and evaluation of the proposed facility and its effects, pursuant to section 16 of this act. Within six hundred (600) days following receipt of the application for a facility as defined in sections 3(3)(a), 3(3)(b)(iv) and 3(c) and within one hundred eighty (180) days for a facility as defined in sections 3(3)(b)(iii) the department shall make a report to the board, which shall contain the department's studies, evaluations, recommendations, other pertinent documents resulting from its study and evaluation pursuant to section 16 of this act and the final environmental impact statement.

The departments of health and environmental sciences, highways, intergovernmental relations, fish and game, and public service regulation shall report to the department information relating to the impact of the proposed site on each department's area of expertise. Such information may include opinions as to the advisability of granting or denying the certificate. The department shall allocate funds obtained from filing fees to the departments making reports to reimburse them for the costs of compiling information and issuing the required report.

(2) On an application for an amendment of a certificate, the board shall hold a hearing in the same manner as a hearing is held on an application for a certificate if the proposed change in the facility would result in any material increase in any environmental impact of the facility or a substantial change in

the location of all or a portion of such facility other than as provided in the alternates set forth in the application.

(3) Upon receipt of the department's report submitted under subsection (1) of this section, the board shall set a hearing date not more than sixty (60) days after such receipt.

Section 8. (1) The parties to a certification proceeding include:

- (a) the applicant;
- (b) each municipality and government agency entitled to receive service of a copy of the application under subsection (3) of section 6 of this act; and

(c) any person residing in a municipality entitled to receive service of a copy of the application under subsection (4) of section 6 of this act; any nonprofit organization, formed in whole or in part to promote conservation or natural beauty, to protect the environment, personal health or other biological values, to preserve historical sites, to promote consumer interests, to represent commercial and industrial groups, or to promote the orderly development of the areas in which the facility is to be located; or any other interested person; and

(d) the department.

(2) Any party identified in subparagraphs (b) and (c) of subsection (1) of this section waives his right to be a party if he does not participate orally at the hearing.

Section 9. Any studies, investigations, reports, or other

documentary evidence, including those prepared by the department, which any party wishes the board to consider or which the board itself expects to utilize or rely upon, shall be made a part of the record; a record shall be made of the hearing and of all testimony taken; and the contested case procedures of the Montana Administrative Procedure Act shall apply to the hearing, except that neither common law nor statutory rules of evidence need apply, but the board may make rules designed to exclude repetitive, redundant or irrelevant testimony.

Section 10. (1) The board shall make complete findings, issue an opinion, and render a decision upon the record, either granting or denying the application as filed, or granting it upon such terms, conditions, or modifications of the construction, operation or maintenance of the utility facility as the board may deem appropriate. The board may not grant a certificate either as proposed or as modified by the board unless it shall find and determine:

- (a) the basis of the need for the facility;
- (b) the nature of the probable environmental impact;
- (c) that the facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives;

- (d) each of the criteria listed in section 16 of this act.
- (e) in the case of an electric, gas or liquid transmission

line or aqueduct, what part, if any, of the line or aqueduct shall be located underground; that such facility is consistent with regional plans for expansion of the appropriate grid of the utility systems serving the state and interconnected utility systems; and that such facilities will serve the interests of utility system economy and reliability;

(f) that the location of the facility as proposed conforms to applicable state and local laws and regulations issued thereunder, except that the board may refuse to apply any local law or regulation if it finds that, as applied to the proposed facility, such law or regulation is unreasonably restrictive in view of the existing technology, or of factors of cost or economics, or of the needs of consumers whether located inside or outside of the directly affected government subdivisions;

(g) that the facility will serve the public interest, convenience and necessity; and

that duly authorized state air and water quality agencies have certified that the proposed facility will not violate state and federally established standards and implementation plans; the judgments of duly authorized air and water quality agencies are conclusive on all questions related to the satisfaction of state and federal air and water quality standards.

(2) If the board determines that the location of all or a part of the proposed facility should be modified, it may condition

its certificate upon such modification, provided that the municipalities, and persons residing therein, affected by the modification, shall have been given reasonable notice of the modification.

(3) A copy of the decision and any opinion issued with the decision shall be served upon each party.

Section 11. (1) In rendering a decision on an application for a certificate, the board shall issue an opinion stating its reasons for the action taken. If the board has found that any regional or local law or regulation, which would be otherwise applicable, is unreasonably restrictive pursuant to paragraph (f) of subsection (1) of section 10 of this act, it shall state in its opinion the reasons therefor.

(2) Any certificate issued by the board shall include the following:

(a) An environmental evaluation statement related to the facilities being certified. The statement shall include, but not be limited to, analysis of the following information:

- (i) the environmental impact of the proposed facility;
- (ii) any adverse environmental effects which cannot be avoided by issuance of the certificate;
- (iii) problems and objections raised by other federal and state agencies and interested groups;

(iv) alternatives to the proposed facilities; and

(v) a plan for monitoring environmental effects of the

proposed facility.

(b) A statement signed by the applicant showing agreement to comply with the requirements of this act and the conditions of the certificate.

(3) The time requirement of section 6 and any of the provisions described in sections 7 through 11 of this act may be waived by the board, for good cause shown with respect to applications filed before January 1, 1975. Applications for certificates under this subsection (3) must be promptly filed. A certificate is not required under this act for facilities under construction or in operation on January 1, 1973. However, a certificate must be obtained for associated facilities upon which construction has not commenced before January 1, 1973, subject to the waiver provisions of this subsection.

Section 12. (1) Any party as defined in section 8 of this act aggrieved by the final decision of the board on an application for a certificate, may obtain judicial review by the filing of a petition in a state district court of competent jurisdiction within thirty (30) days after the issuance of such final decision. Upon receipt of such petition, the department shall deliver to the court a copy of the written transcript of the record of the proceeding before it and a copy of the board's decision and opinion entered therein which shall constitute the record on judicial review. A copy of such transcript, decision and opinion shall remain on file with the department and shall be available

for public inspection.

(2) If a decision is issued after a hearing on an application for a certificate, such decision is final for purposes of judicial review. The judicial review procedure shall be the same as that for contested cases under the Montana Administrative Procedure Act.

Section 13. Except as expressly set forth in sections 12, 17 and 21 of this act, no court of this state shall have jurisdiction to hear or determine any issue, case or controversy concerning any matter which was or could have been determined in a proceeding before the board under this act or to stop or delay the construction, operation or maintenance of a utility facility except to enforce compliance with this act or the provisions of a certificate issued hereunder pursuant to sections 19 or 21 of this act.

Section 14. (1) Each utility shall furnish annually to the department for its review, a long-range plan for the construction and operation of utility facilities. Such plan shall be submitted on April 1 of each year. The plan shall include the following:

(a) the general location, size and type of all utility facilities to be owned and operated by the utility whose construction is projected to commence during the ensuing ten (10) years, as well as those facilities to be removed from service during the planning period;

(b) a description of efforts by the utility to coordinate

the plan with other utilities so as to provide a coordinated regional plan for meeting the utility needs of the region;

(c) a description of the efforts to involve environmental protection and land use planning agencies in the planning process, as well as other efforts to identify and minimize environmental problems at the earliest possible stage in the planning process;

(d) projections of the demand for the service rendered by the utility and explanation of the basis for such projections, and a description of the manner and extent to which the proposed facilities will meet the projected demand; and

(e) additional information that the department on its own initiative or upon the advice of interested state agencies might request in order to carry out the purposes of this act.

(2) The plan shall be made available to the public by the department, and the utility shall be required to give public notice throughout the state of its plan by filing the plan with the environmental quality council, the department of health and environmental science, the department of highways, the department of public service regulation, the department of state lands and the department of intergovernmental relations. Citizen environmental protection and resource planning groups, and other interested persons may obtain a plan by written request and payment therefor.

Section 15. If a utility lists and identifies a proposed facility facility in its plan, submitted pursuant to section 14 of

this act, as one on which construction is proposed to be commenced within the five (5) year period next proceeding submission of the plan, the department shall commence examination and evaluation of the site to determine whether construction of the proposed facility would unduly impair the environmental values in section 16 of this act. This study may be continued until such time as a utility files an application for a certificate under section 6 of this act. Information gathered under this section may be used to support findings and recommendations required for issuance of a certificate.

Section 16. In evaluating long-range plans, conducting five-year site reviews, and evaluating applications for certificates of site and facility, the board and department shall give consideration to the following list of environmental factors and may, by regulation, add to the categories of this section:

- (i) Energy needs.
- (a) Growth in demand and projections of need.
- (b) Availability and desirability of alternative sources of energy.
- (c) Availability and desirability of alternative sources of energy in lieu of the proposed facility.
- (d) Promotional activities of the utility which may have given rise to the need for this facility.
- (e) Socially beneficial uses of the output of this facility, including its uses to protect or enhance environmental

quality.

- (f) Conservation activities which could reduce the need for more energy.
- (g) Research activities of the utility of new technology available to it which might minimize environmental impact.

(2) Land use impacts.

- (a) Area of land required and ultimate use.
- (b) Consistency with areawide state and regional land use plans.

(e) Consistency with existing and projected nearby land use.

(d) Alternative uses of the site.

(e) Impact on population already in the area; population attracted by construction or operation of the facility itself; impact of availability of energy from this facility on growth patterns and population dispersal.

(f) Geologic suitability of the site or route.

(g) Seismologic characteristics.

(h) Construction practices.

(i) Extent of erosion, scouring, wasting of land--both at site and as a result of fossil fuel demands of the facility.

(j) Corridor design and construction precautions for transmission lines or aqueducts.

(k) Scenic impacts.

(l) Effects on natural systems, wildlife, plant life.

(m) Impacts on important historic architectural, archeological, and cultural areas and features.

(n) Extent of recreation opportunities and related compatible uses.

(o) Public recreation plan for the project.

(p) Public facilities and accommodation.

(q) Opportunities for joint use with energy intensive industries, or other activities to utilize the waste heat from facilities.

(3) Water resources impacts.

(a) Hydrologic studies of adequacy of water supply and impact of facility on stream flow, lakes and reservoirs.

(b) Hydrologic studies of impact of facilities on ground water.

(c) Cooling system evaluation including consideration of alternatives.

(d) Inventory of effluents including physical, chemical, biological, and radiological characteristics.

(e) Hydrologic studies of effects of effluents on receiving waters, including mixing characteristics of receiving waters, changed evaporation due to temperature differentials, and effect of discharge on bottom sediments.

(f) Relationship to water quality standards.

(g) Effects of changes in quantity and quality on water use by others, including both withdrawal and in situ uses;

relationship to projected uses; relationship to water rights.
 (h) Effects on plant and animal life, including algae, macroinvertebrates, and fish population.

(i) Effects on unique or otherwise significant ecosystems; e.g., wetlands.

(j) Monitoring programs.
 (4) Air quality impacts.
 (a) Meteorology. Wind direction and velocity, ambient temperature ranges, precipitation values, inversion occurrence, other effects on dispersion.

(b) Topography. Factors affecting dispersion.
 (c) Standards in effect and projected for emissions, design capability to meet standards.

(d) Emissions and controls.
 (i) Stack design.
 (ii) Particulates.
 (iii) Sulfur Oxides.
 (iv) Oxides of Nitrogen.
 (v) Heavy metals, trace elements, radioactive materials and other toxic substances.

(e) Relationship to present and projected air quality of the area.
 (f) Monitoring program.
 (5) Solid wastes impact.
 (a) Solid waste inventory.

(b) Disposal program.
 (c) Relationship of disposal practices to environmental quality criteria.

(d) Capacity of disposal sites to accept projected waste loadings.

(6) Radiation impacts.
 (a) Land use controls over development and population.
 (b) Wastes and associated disposal program for solid, liquid, radioactive and gaseous wastes.
 (c) Analyses and studies of the adequacy of engineering safeguards and operating procedures.

(d) Monitoring. Adequacy of devices and sampling techniques.

(7) Noise impacts.
 (a) Construction period levels.
 (b) Operational levels.

(c) Relationship of present and projected noise levels to existing and potential stricter noise standards.

(d) Monitoring. Adequacy of devices and methods.
 Section 17. Notwithstanding any other provision of law, no state or regional agency, or municipality or other local government may require any approval, consent, permit, certificate or other condition for the construction, operation or maintenance of a utility facility authorized by a certificate issued pursuant to the provisions of this act; except that the state air and water

quality agency or agencies shall retain authority which they have or may be granted to determine compliance of the proposed facility with state and federal standards and implementation plans for air and water quality and to enforce those standards. Nothing in this act shall prevent the application of state laws for the protection of employees engaged in the construction, operation or maintenance of such facility.

Section 18. Revocation or suspension of certificate. A certificate may be revoked or suspended:

(1) for any material false statement in the application or in accompanying statements or studies required of the applicant, if a true statement would have warranted the board's refusal to grant a certificate; or

(2) for failure to maintain safety standards or to comply with the terms or conditions of the certificate; or

(3) for violation of the provisions of this act, the regulations issued thereunder, or orders of the board or department.

Section 19. (1) A resident of this state, with knowledge that a requirement of this act or a rule adopted under this act, is not being enforced by a public officer or employee whose duty it is to enforce the requirement or rule may bring the failure to enforce to the attention of the public officer or employee by a written statement under oath that shall state the specific facts of the failure to enforce the requirement or rule. Knowingly

making false statements or charges in the affidavit subjects the affiant to penalties prescribed under the law of perjury.

(2) If the public officer or employee neglects or refuses for an unreasonable time after receipt of the statement to enforce the requirement or rule, the resident may bring an action of mandamus in the district court of the first judicial district of this state, in and for the county of Lewis and Clark. If the court finds that a requirement of this act or a rule adopted under this act is not being enforced, the court may order the public officer or employee, whose duty it is to enforce the requirement or rule, to perform his duties. If he fails to do so, the public officer or employee shall be held in contempt of court and is subject to the penalties provided by law.

(3) An owner of an interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from a surface or underground source may sue a utility to recover damages for contamination, diminution, or interruption of the water supply, proximately resulting from the operation of a utility facility.

Section 20. (1) The board and department may adopt rules implementing the provisions of this act.

(2) The board and the department shall have continuing authority and responsibility for monitoring the operations of all certificated facilities, for assuring continuing compliance with this act and certificates issued hereunder, and for discovering

and preventing noncompliance with this act and such certificates.

Section 21. (1) Whoever

(a) without first obtaining a certificate of site and facility required under section 4, commences to construct or operate a utility facility after the effective date of this act;

(b) having first obtained a certificate of site and facility, constructs, operates or maintains a utility facility other than in compliance with the certificate; or

(c) causes any of the aforementioned acts to occur; shall be liable to a civil penalty of not more than ten thousand dollars (\$10,000) for each violation. Each day of a continuing violation shall constitute a separate offense. The penalty shall be recoverable in a civil suit brought by the attorney general on behalf of the state in the first district court of Montana.

(2) Whoever knowingly and willfully violates subsection (1) shall be fined not more than ten thousand dollars (\$10,000) for each violation or imprisoned for not more than one (1) year, or both. Each day of a continuing violation shall constitute a separate offense.

(3) In addition to any penalty provided in subsections (1) or (2), whenever the department determines that a person is violating or is about to violate any of the provisions of this section, it shall refer the matter to the attorney general who may bring a civil action on behalf of the state in the first district

court of Montana for injunctive or other appropriate relief against the violation and to enforce the act or a certificate issued hereunder, and upon a proper showing a permanent or preliminary injunction or temporary restraining order shall be granted without bond.

(4) All fines collected shall be deposited in the state general fund.

Section 22. Grants, gifts and funds. The department shall have authority to receive grants, gifts and other funds from any public or private source, to assist in its activities under this act.

Section 23. This act supersedes other laws or regulations. If any provision of this act is in conflict with any other law of this state, or any rule or regulation promulgated thereunder, this act shall govern and control, and such other law, rule or regulation shall be deemed superseded for the purpose of this act.

Section 24. Severability. If any provision of this act, or its application to any person is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances, is not affected.

Section 25. This act shall become effective on passage and approval.

UTILITY SITING ACT

1. No person can begin construction of a utility facility as defined in this Act, except those under exclusively federal jurisdiction, without first obtaining a certificate from the Board of Natural Resources and Conservation.

2. Each producer governed by title 89, sections 1601-1609, must pay in addition to the energy producers' license tax an additional .25% of the gross amount shown on the statement required by those sections.

A. The state board of equalization must report to the state treasurer separately the amount of this additional tax.

B. The Legislature must enact a tax on gasification, liquefaction and uranium enrichment facilities to generate revenue equal to this additional tax on energy producers.

3. Applications for certificates must be filed prior to the date construction of the utility is scheduled to begin (unless the Board waives the time upon a clear and convincing showing of immediate need):

A. Nine months before a transmission line of less than 161 kilovolts;

B. Two years before (1) an energy generating and conversion plant designed for generating 50 megawatts of electricity or more or any addition thereto costing more than \$250,000; (2) a plant for producing 100 million cubic feet of gas/day or more or any addition thereto costing more than \$250,000; (3) a plant designed for producing 50,000 barrels of liquid hydro-carbon/day or addition thereto costing more than \$250,000; (4) a plant designed for enriching uranium minerals or transmission lines not exempted; (5) gas or liquid transmission lines capable of transporting gas or liquid hydro-carbon products from a gasification plant of 100 million cubic feet/day or liquefaction plant of 50,000 barrels/day capacity;

C. The application must contain:

(1) Description of the location and facility proposed

(2) Summary of any environmental impact studies done

- (3) Statement of the need for the facility
- (4) Discussion of alternatives
- (5) Any other relevant information

D. Each application must be served upon the chief executive of each municipality and the head of each government agency charged with the duty of protecting the environment or of land use planning in the area in which the utility is to be located. Notice by publication must be given to persons residing in the affected municipality.

E. A filing fee, based on the total cost of the project, must be paid.

4. The Department of Natural Resources and Conservation must begin an intensive study and evaluation of each application upon filing.

A. The following departments must report to the Department of Natural Resources and Conservation information relating to the impact of the proposed project on each department's area of expertise (the Act specifies no particular time):

- (1) Health and Environmental Sciences
- (2) Highways
- (3) Intergovernmental Relations
- (4) Fish and Game
- (5) Public Service Regulation

B. Within 600 days of a 2-year application or 180 days of a 9-month application, the Department of Natural Resources and Conservation must report its evaluation and recommendation to the Board, considering the environmental factors listed in § 16.

C. The Department must allocate funds from the filing fee to reimburse each other department for its costs.

5. The Board must set a hearing date within 60 days of receipt of the Department's report.

A. The parties to the hearing are:

- (1) The applicant
- (2) Each governmental agency and municipality entitled to be served

(3) Any other interested person or non profit environmental, conservation, industry, etc. groups.

(4) The Department of Natural Resources and Conservation

B. Any of these parties waives his right to be a party if he does not orally participate in the hearing.

C. Any studies, reports, or other evidence which any party wishes the Board to consider or which the Board itself relies upon, together with a transcript of the hearing, are made a part of the record.

6. The Board must make complete findings, issue an opinion and make a decision on the record either granting or denying the application or granting it on such terms and conditions as may be appropriate (the Act specifies no time limit for issuing the decision).

A. A copy of the decision must be served on each party to the hearing.

B. The certificate must include an environmental evaluation statement and an agreement by the applicant to comply with its terms.

C. Upon application for an amendment to a certificate, a hearing must be held as on an original application if the change would result in a material increase in environmental impact or a substantial change in location.

7. Any party to the certification hearing aggrieved by the final decision of the Board may obtain judicial review by filing a petition with the state district court of proper jurisdiction within 30 days of the final decision.

A. A decision by the Board on an application after a hearing is final for purposes of judicial review.

B. Except for purposes of judicial review as above, or for enforcing state and federal air and water quality standards, or for actions involving violations of the Act, no state court has jurisdiction to determine any matter which was or could have been determined in a proceeding before the board, or to stop or delay any certified facility.

8. The time limits for the application period, for the Department's report, and for the hearing may be waived for good cause in applications filed before January 1, 1975.

A. No certificate is required for facilities under construction before January 1, 1973, but associated facilities begun after that time are covered.

9. Each utility must file on April 1 of each year an annual report of long-range plans for construction and operation of utility facilities, which must include the information specified in § 14 of the Act.

A. The Department must review the plans and make them available to the public.

B. The utility must file copies of the plan with the following other departments:

- (1) Environmental Quality Council
- (2) Health and Environmental Sciences
- (3) Highways
- (4) Public Service
- (5) State Lands
- (6) Intergovernmental Relations

C. If a facility is planned to begin within 5 years, the Department must begin an examination and evaluation of the site, considering the environmental factors listed in § 16.

10. No state or regional agency, municipality or local government may require any approval, permit, etc., for construction, operation or maintenance of a certified utility.

A. Except that state air and water quality agencies retain present and future authority to determine compliance with state and federal air and water quality implementation plans.

B. Nothing in the Act prevents application of state laws protecting employees engaged in construction, operation and maintenance of the facility.

11. A certificate may be revoked or suspended:

A. For any false material statement in the application

B. For failure to observe safety standards or the terms of the certificate

C. For violation of the Act, the regulations or orders of the Board or

Department.

12. Private actions for enforcement of the Act:

A. If any resident knows that a requirement of the Act or the rules is not being enforced, he can bring the failure to the attention of the officer or employee charged with the enforcement duty, by means of a written statement under oath.

B. If that officer or employer does not enforce the Act or rule within a reasonable time, the resident can bring a mandamus action in the district court of Lewis and Clark County.

C. A holder of an interest in property may sue a utility for damages for contamination, diminution or interruption of his water supply resulting from operation of the utility.

13. The Board and Department may adopt rules to implement the Act. They also have continuing responsibility to monitor certified facilities, assuring compliance with the Act and preventing non-compliance.

14. Whoever begins construction of a utility without a certificate, or operates a utility in violation of the certificate, or who causes either of these Acts is liable for a civil penalty of \$10,000. Whoever knowingly and willfully undertakes the Acts above may be fined \$10,000 or imprisoned for one year or both. The Department may request the attorney general to seek injunctive relief for violations of the Act.

The ideas and opinions expressed
in this report
are those of the author.
They do not necessarily reflect
the views of the
WICHE Commissioners or WICHE staff.

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and environmental improvement, this report
has been printed on recycled paper.

THE RESOURCES DEVELOPMENT INTERNSHIP PROGRAM

The preceding report was completed by a WICHE intern during the summer of 1973. This intern's project was part of the Resources Development Internship Program administered by the Western Interstate Commission for Higher Education (WICHE).

The purpose of the internship program is to bring organizations involved in community and economic development, environmental problems and the humanities together with institutions of higher education and their students in the West for the benefit of all.

For these organizations, the intern program provides the problem-solving talents of student manpower while making the resources of universities and colleges more available. For institutions of higher education, the program provides relevant field education for their students while building their capacity for problem-solving.

WICHE is an organization in the West uniquely suited for sponsoring such a program. It is an interstate agency formed by the thirteen western states for the specific purpose of relating the resources of higher education to the needs of western citizens. WICHE has been concerned with a broad range of community needs in the West for some time, insofar as they bear directly on the well-being of western peoples and the future of higher education in the West. WICHE feels that the internship program is one method for meeting its obligations within the thirteen western states. In its efforts to achieve these objectives, WICHE appreciates having received the generous support and assistance of the Economic Development Administration, the Jessie Smith Noyes Foundation, the National Endowment for the Humanities, the National Science Foundation, and of innumerable local leaders and community organizations, including the agency that sponsored this intern project.

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